

(1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING WAYS BUT NOT TO EXCEED THE CONTRACT FEE AND THE MARKET VALUE OF OTHER CONSIDERATION REQUIRED UNDER THE CONTRACT FOR THE PERFORMANCE THAT WAS THE SUBJECT OF THE BREACH:

(A) THE AMOUNT OF ACCRUED AND UNPAID CONTRACT FEES AND THE MARKET VALUE OF OTHER CONSIDERATION EARNED BUT NOT RECEIVED FOR:

(I) ANY PERFORMANCE ACCEPTED BY THE LICENSEE; AND

(II) ANY PERFORMANCE TO WHICH § 21-604 OF THIS TITLE APPLIES;

(B) FOR PERFORMANCES NOT GOVERNED BY SUBPARAGRAPH (A) OF THIS PARAGRAPH, IF THE LICENSEE REPUDIATED OR WRONGFULLY REFUSED THE PERFORMANCE OR THE LICENSOR RIGHTFULLY CANCELED AND THE BREACH MAKES POSSIBLE A SUBSTITUTE TRANSACTION, THE AMOUNT OF LOSS AS DETERMINED BY CONTRACT FEES AND THE MARKET VALUE OF OTHER CONSIDERATION REQUIRED UNDER THE CONTRACT FOR THE PERFORMANCE LESS:

(I) THE CONTRACT FEES AND MARKET VALUE OF OTHER CONSIDERATION RECEIVED FROM AN ACTUAL AND COMMERCIALY REASONABLE SUBSTITUTE TRANSACTION ENTERED INTO BY THE LICENSOR IN GOOD FAITH AND WITHOUT UNREASONABLE DELAY; OR

(II) THE MARKET VALUE OF A COMMERCIALY REASONABLE HYPOTHETICAL SUBSTITUTE TRANSACTION;

(C) FOR PERFORMANCES NOT GOVERNED BY SUBPARAGRAPH (A) OF THIS PARAGRAPH, IF THE BREACH DOES NOT MAKE POSSIBLE A SUBSTITUTE TRANSACTION, LOST PROFIT, INCLUDING REASONABLE OVERHEAD, THAT THE LICENSOR WOULD HAVE REALIZED ON ACCEPTANCE AND FULL PAYMENT FOR PERFORMANCE THAT WAS NOT DELIVERED TO THE LICENSEE BECAUSE OF THE LICENSEE'S BREACH; OR

(D) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

(2) CONSEQUENTIAL AND INCIDENTAL DAMAGES.

21-809. LICENSEE'S DAMAGES.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND EXCEPT AS OTHERWISE PROVIDED IN § 21-807 OF THIS SUBTITLE, A BREACH OF CONTRACT BY A LICENSOR ENTITLES THE LICENSEE TO RECOVER THE FOLLOWING COMPENSATION FOR LOSSES RESULTING IN THE ORDINARY COURSE FROM THE BREACH OR, IF APPROPRIATE, AS TO THE WHOLE CONTRACT, LESS EXPENSES AVOIDED AS A RESULT OF THE BREACH TO THE EXTENT NOT OTHERWISE ACCOUNTED FOR UNDER THIS SECTION:

(1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING WAYS, BUT NOT TO EXCEED THE MARKET VALUE OF THE PERFORMANCE THAT WAS