

105TH CONGRESS  
1ST SESSION

# H. R. 401

To modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. HYDE (for himself, Mr. SENSENBRENNER, Mr. GEKAS, Mr. COBLE, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. CANADY of Florida, Mr. BONO, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To modify the application of the antitrust laws to encourage the licensing and other use of certain intellectual property.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Intellectual Property  
5 Antitrust Protection Act of 1997”.

6 **SEC. 2. PROHIBITION OF MARKET POWER PRESUMPTION.**

7 In any action in which the conduct of an owner, licen-  
8 sor, licensee, or other holder of an intellectual property  
9 right is alleged to be in violation of the antitrust laws in

1 connection with the marketing or distribution of a product  
2 or service protected by such a right, such right shall not  
3 be presumed to define a market, to establish market power  
4 (including economic power and product uniqueness or dis-  
5 tinctiveness), or to establish monopoly power.

6 **SEC. 3. DEFINITIONS.**

7 For purposes of this Act—

8 (1) the term “antitrust laws”—

9 (A) has the meaning given it in subsection  
10 (a) of the first section of the Clayton Act (15  
11 U.S.C. 12(a)), except that such term includes  
12 section 5 of the Federal Trade Commission Act  
13 (15 U.S.C. 45) to the extent such section ap-  
14 plies to unfair methods of competition; and

15 (B) includes any State law similar to the  
16 laws referred to in subparagraph (A); and

17 (2) the term “intellectual property right”  
18 means a right, title, or interest—

19 (A) in subject matter patented under title  
20 35, United States Code; or

21 (B) in a work, including a mask work, pro-  
22 tected under title 17, United States Code.

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