

Congressman Thomas Massie
Statement for the Record
April 14, 2021 Judiciary Committee Mark-up

Statement for the Record to Accompany “Final Report on Investigation of Competition in Digital Markets” (Subcommittee on Antitrust, Commercial and Administrative Law).

Colleagues, the best way to counter large, monopolistic players is to give innovator Davids a fighting chance to compete and displace the Goliaths. Our patent system has been seriously weakened over the past three decades. By restoring reliability and exclusivity in private intellectual property rights, innovators can challenge and compete against Big Tech or Big Anybody. That’s the solution. Secure property rights in inventions, and innovators can attract investors. Innovators with venture capital have running room to turn a startup built around an invention into a successful company.

That’s the type of competition that really makes Big Tech nervous. Why else do you think Big Tech has spent so much time and money weakening patents and the ability to enforce IP rights? Right now, for example, Big Tech is working in Germany to remove the ability of patent owners to get injunctive relief against infringers. That’s what these special interests did in the United States. They’ve taken their show on the road.

However, I hope we won’t do further harm to our intellectual property system. Let me warn my colleagues to beware counterproductive legislation now on the Senate side. The chairwoman of the Senate Antitrust Subcommittee recently introduced a broad antitrust bill. It contains a provision that would let antitrust enforcers consider applying for or enforcing one’s intellectual property as “exclusionary conduct.” Let me enlighten the Senator and my colleagues: The very right a patent or copyright or other IP secures is the right to exclude. Exclusivity is the point and the purpose — to, as President Lincoln put it, “add the fuel of interest to the fire of genius.”

We must resist the urge to go full speed ahead with antitrust changes that are likely to do more harm than good. In trying to spur competition, instead I fear we’ll entrench and cement static markets and incumbent firms. Rather, we must restore IP exclusivity and the ability to enforce one’s exclusive rights. That’s the recipe for enabling dynamic competition — the kind that creates new markets, pushes aside Goliaths, and benefits both consumer and competition.