

Does Monopoly Broth Make Bad Soup?
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One potential remedy for antitrust violations involving intellectual property is to require the defendant to license its IP to all comers on reasonable and nondiscriminatory terms, with the court retaining jurisdiction to set the royalty rate in the event the parties cannot agree. Such compulsory licensing and retention of jurisdiction provisions were frequently employed in Justice Department consent decrees in the the 1940s-60s. One objection to such provisions is that courts are ill-suited to act as rate-regulators of intellectual property. However, experience has shown that courts rarely have to intervene to the set the rate under such provisions. Instead, the parties usually bargain to an agreed solution in the shadow of the rate-setting court.