



PRESIDENTIAL MEMORANDA

Memorandum on Combating Trafficking in Counterfeit and Pirated Goods

— ECONOMY & JOBS

Issued on: April 3, 2019



MEMORANDUM FOR THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SECRETARY OF HOMELAND SECURITY
THE DIRECTOR OF THE OFFICE OF MANAGEMENT
AND BUDGET
THE UNITED STATES TRADE REPRESENTATIVE
THE ASSISTANT TO THE PRESIDENT FOR ECONOMIC
POLICY
THE ASSISTANT TO THE PRESIDENT FOR TRADE AND
MANUFACTURING POLICY
THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

SUBJECT: Combating Trafficking in Counterfeit and
Pirated Goods

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy and Background. (a) It is the policy of my Administration to protect American businesses, intellectual property rights holders, consumers, national and economic security, and

the American public from the dangers and negative effects of counterfeit and pirated goods, including those that are imported through online third-party marketplaces and other third-party intermediaries. We must improve coordinated efforts within the Federal Government to address this challenge, which are led by the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, through the Intellectual Property Enforcement Coordinator, and the United States Trade Representative.

(b) Counterfeit trafficking impairs economic competitiveness by harming United States intellectual property rights holders and diminishing the reputations and trustworthiness of online markets; cheats consumers and poses risks to their health and safety; and may threaten national security and public safety through the introduction of counterfeit goods destined for the Department of Defense and other critical infrastructure supply chains. An estimate from the Organisation for Economic Co-operation and Development (OECD) indicates the value of trade in counterfeit and pirated goods to be approximately half a trillion dollars per annum, with roughly 20 percent of this trade infringing upon intellectual property belonging to United States persons. A recent Government Accountability Office report examined four categories of frequently counterfeited goods, and, based on a small sample of these goods purchased through various online third-party marketplaces, found that more than 40 percent were counterfeit.

(c) Preventing the manufacture, importation, and sale of counterfeit and pirated goods is a priority for Federal law enforcement agencies.

(d) Existing efforts within the Federal Government to deter online trafficking in counterfeit and pirated goods through third-party intermediaries should be expanded and enhanced to better address the scale, scope, and consequences of counterfeit and pirated goods trafficking.

(e) Third-party intermediaries, including online third party marketplaces, carriers, customs brokers, payment providers, vendors, and others involved in international transactions, can all be beneficial partners in combating trafficking in counterfeit and pirated goods. In order to build on cooperative efforts that are already underway with such partners, a coordinated approach by the Federal Government, including its law enforcement agencies, and private industry is needed.

(f) Comprehensive data regarding the extent of counterfeit trafficking through online third-party marketplaces are lacking.

Sec. 2. Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations. (a) Within 210 days of the date of this memorandum, the Secretary of Homeland Security, in coordination with the Secretary of Commerce, and in consultation with the Attorney General, the Director of the Office of Management and Budget, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for Trade and Manufacturing Policy, the heads of other executive departments and agencies (agencies) and offices as determined by the Secretary of Homeland Security, shall prepare and submit a report to the President through the Assistant to the President for Economic Policy and the Assistant to the President for Trade and Manufacturing Policy. In preparing the report, the Secretary of Homeland Security, in coordination with the Secretary of Commerce, shall, consistent with applicable law, consult with intellectual property rights holders, third-party intermediaries, and other stakeholders.

(b) The report shall:

(i) Analyze available data and other information to develop a deeper understanding of the extent to which online third-party marketplaces and other third party intermediaries are used to facilitate the importation and sale of counterfeit and pirated goods; identify the factors that contribute to trafficking in counterfeit and pirated goods; and describe any market incentives and distortions that may contribute to third-party intermediaries facilitating trafficking in counterfeit and pirated goods. This review should include data regarding the origins of counterfeit and pirated goods and the types of counterfeit and pirated goods that are trafficked, along with any other relevant data, and shall provide a foundation for any recommended administrative, regulatory, legislative, or policy changes.

(ii) Evaluate the existing policies and procedures of third-party intermediaries relating to trafficking in counterfeit and pirated goods, and identify the practices of those entities that have been most effective in curbing the importation and sale of counterfeit and pirated goods, including those conveyed through online third-party marketplaces. The report should also evaluate the effectiveness of Federal efforts, including the requirement for certain Federal contractors to establish and maintain a system to detect and avoid counterfeit electronic parts under the Defense Federal Acquisition Regulation Supplement (DFARS) 252.246-7007, as well as steps taken by foreign governments, such as France and Canada, to combat trafficking in counterfeit and pirated goods.

- (iii) To the extent that certain types of data are not currently available to the Federal Government, or accessible in a readily usable form, recommend changes to the data collection practices of agencies, including specification of categories of data that should be collected and appropriate standardization practices for data.
 - (iv) Identify appropriate administrative, statutory, regulatory, or other changes, including enhanced enforcement actions, that could substantially reduce trafficking in counterfeit and pirated goods or promote more effective law enforcement regarding trafficking in such goods. The report should address the practices of counterfeiters and pirates, including their shipping, fulfillment, and payment logistics, and assess means of mitigating the factors that facilitate trafficking in counterfeit and pirated goods.
 - (v) Identify appropriate guidance that agencies may provide to third-party intermediaries to help them prevent the importation and sale of counterfeit and pirated goods.
 - (vi) Identify appropriate administrative, regulatory, legislative, or policy changes that would enable agencies, as appropriate, to more effectively share information regarding counterfeit and pirated goods, including suspected counterfeit and pirated goods, with intellectual property rights holders, consumers, and third-party intermediaries.
 - (vii) Evaluate the current and future resource needs of agencies and make appropriate recommendations for more effective detection, interdiction, investigation, and prosecution regarding trafficking in counterfeit and pirated goods, including trafficking through online third-party marketplaces and other third-party intermediaries. These recommendations should include suggestions for increasing the use of effective technologies and expanding collaboration with third party intermediaries, intellectual property rights holders, and other stakeholders.
 - (viii) Identify areas for collaboration between the Department of Justice and Department of Homeland Security on efforts to combat trafficking in counterfeit and pirated goods.
- (c) Within 30 days of submitting the report required by section 2(a) of this memorandum, the Secretary of Homeland Security is authorized and directed to prepare, consistent with applicable law, a public version of the report and publish it in the Federal Register.

Sec. 3. Definitions.

For purposes of this memorandum and the reports described herein:

- (a) “Counterfeit” means the use of a “counterfeit mark” as defined in 18 U.S.C. 2320(f)(1), in connection with goods, services, or labeling or packaging; or mislabeled, substandard, or fraudulently obtained goods, even when such goods do not involve a counterfeit mark.
- (b) “Pirated” means the reproduction of copyrighted works in a tangible medium in violation of the rights of the copyright owner, as defined in 17 U.S.C. 501 et seq.
- (c) “Online third-party marketplace” means any web-based platform that includes features primarily designed for arranging the sale, purchase, payment, or shipping of goods, or that enables sellers not directly affiliated with an operator of such platforms to sell physical goods to consumers located in the United States.
- (d) “Third-party intermediaries” means online third-party marketplaces, carriers, customs brokers, payment providers, vendors, and other parties involved in international transactions.
- (e) “Traffic” and “trafficking” have the same meaning as the term “traffic” in 18 U.S.C. 2320.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof;
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or
- (iii) existing rights or obligations under international agreements.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.