

# Report ordered by President Trump will shape future administration action on counterfeit and pirated goods

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President Trump's Memorandum on Combating Trafficking in Counterfeit and Pirated Goods (memorandum) commissions a report, due 30 October 2019, requiring the collection and analysis of information as well as preparation of recommendations concerning trade in counterfeit and pirated goods through online third-party marketplaces and third-party intermediaries. The report will inform future administration efforts to combat trade in counterfeit and pirated goods. It will be prepared by an interagency group headed by the Secretary of Homeland Security and including the Secretary of Commerce, the Attorney General, the Director of the Office of Management and Budget, the U.S. Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for Trade and Manufacturing Policy, and the heads of other executive offices as determined by the Secretary of Homeland Security.

## **Background**

The Organisation for Economic Co-operation and Development has estimated the value of the annual trade in counterfeit and pirated goods at US\$500 billion with 20 percent of the trade infringing on the intellectual property rights of U.S. persons. In the memorandum, President Trump highlighted the harm caused by such trade to intellectual property rights holders and to customers. U.S. national security is implicated because of the possible use of counterfeit goods by the Department of Defense and in U.S. critical infrastructure. The prevention of the manufacture, import, and sale of counterfeit goods are identified in the memorandum as a priority for law enforcement and the expansion and enhancement of current efforts to deter online trafficking as a policy objective.

## **Scope of the report**

The memorandum highlights both "third-party intermediaries," which includes carriers, customs brokers, payment providers, vendors, and "other parties involved in international transactions," as well as online third-party marketplaces, which includes "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." The topics to be covered in the report include:

- Types and origins of counterfeit and pirated goods.
- Information on which online third-party marketplaces and other intermediaries facilitate the importation and sale of counterfeit and pirated goods.
- Current and future resource needs.
- Data collection changes.
- Existing policies and procedures of third-party intermediaries for addressing trafficking in counterfeit and pirated goods.
- Appropriate administrative, statutory, regulatory, or other changes, including enhanced enforcement actions that could substantially reduce trafficking in counterfeit and pirated goods.
- Guidance from agencies to help third-parties prevent the importation and sale of counterfeit and pirated goods.
- Areas of collaboration for the Department of Justice and Department of Homeland Security in combatting trafficking in counterfeit and pirated goods.
- Private sector efforts and identification of the most effective practices.
- Other countries' efforts to address trafficking in counterfeit and pirated items.

The report will address the requirement that certain federal contractors maintain a system to detect and avoid counterfeit electronic parts. Further, the memorandum calls for expanded cooperation and information sharing among agencies as well as the increased application of technology.

### **What this means**

The memorandum states that the information collected will be the basis for future efforts to combat trade in counterfeit and pirated goods. Press accounts indicated that the memorandum was a "warning shot across the bow" and if industry does not "clean it up the government will."

For further information regarding trade in pirated and counterfeit goods and the potential implications of the administration's efforts, please contact any of the lawyers identified below.

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