

# Assessing the Impact of President Trump's Rescinding of Biden's 2023 Executive Order on Safe, Secure, and Trustworthy AI

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President Trump's January 20, 2025 rescission of President Biden's 2023 Executive Order on the Safe, Secure, and Trustworthy Development and Use of AI (2023 AI EO) and January 23, 2025 Executive Order on Removing Barriers to American Leadership in Artificial Intelligence remove a centralized federal framework for AI safety and ethics. This shift away from unified guidance leaves much uncertainty as to the future of actions taken under the Biden administration. While President Trump has stated this deregulated approach will encourage private-sector investment and innovation, it introduces uncertainty and leaves companies subject to a patchwork of state AI laws and regulatory structures from outside the US, such as from the EU, for the foreseeable future. As for intellectual property, the rescission should not impact the work at the United States Copyright Office, however, President Trump's edict that any Biden-era actions taken pursuant to the 2023 AI EO must be suspended if they conflict with Trump's newly articulated policy directive: "to sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security,"<sup>[1]</sup> could ostensibly call into question United States Patent and Trademark Office (USPTO) guidance on inventorship and patent eligibility. What will the future hold for substantive AI policy from the Trump administration? It looks like we'll have to wait at least six months to find out.

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Amid the executive orders issued during the first days of President Trump's second-term, President Trump issued an Executive Order on January 20, 2025 (Rescission EO)<sup>[2]</sup> rescinding, *inter alia*, President Biden's 2023 AI EO,<sup>[3]</sup> and issued a January 23, 2025 Executive Order on Removing Barriers to American Leadership in Artificial Intelligence (2025 Removing Barriers AI EO) specifically directing several advisors to work with agency heads to "identify any actions taken pursuant to [the 2023 AI EO] that are or may be inconsistent with, or present obstacles to . . . sustain[ing] and enhance[ing] America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security."<sup>[4]</sup>

Despite the early move to overturn the prior administration's work on AI, President Trump's Executive Order did not rescind President Biden's AI order from last week,<sup>[5]</sup> which provided federal support to address the massive energy needs of advanced AI data centers through leasing federal land owned by the Departments of Defense and Energy (2025 Infrastructure AI EO).<sup>[6]</sup> That said, it is clear President Trump's rescission work is not yet done. In the

Rescission EO, President Trump directed the Director of the Domestic Policy Council (DPC) and the Director of the National Economic Council (NEC) to submit, within 45 days of the Rescission EO, an “additional list of orders, memoranda, and proclamations issued by the prior administration that should be rescinded. . . .”

The Rescission EO—which focuses on deregulation and minimizing government intervention with the stated purpose of accelerating the US’s technological edge—has left a vacuum in the AI space. To fill that void in the future, the 2025 Removing Barriers AI EO, directs a panel—including the Special Advisor for AI and Crypto, David Sacks<sup>[7]</sup>—to “[w]ithin 180 days of this order . . . develop and submit to the President an action plan to achieve the policy set forth in section 2 of this order.”<sup>[8]</sup> That policy (Section 2 of the 2025 Removing Barriers AI EO) seeks to “sustain and enhance America’s global AI dominance in order to promote human flourishing, economic competitiveness, and national security.”<sup>[9]</sup>

President Trump has also signaled that he intends to encourage significant investment in AI. On Tuesday, January 21, Trump announced the “Stargate” initiative, involving a joint AI venture between OpenAI, SoftBank, and Oracle, that has already committed US\$100B for immediate deployment and is proposed to scale up to US\$500B over the next four years.<sup>[10]</sup>

Until a plan is issued pursuant to the 2025 Removing Barriers AI EO to provide further guidance, and possibly even beyond such guidance, US companies will have to navigate a complex web of state-specific and international AI laws absent comprehensive federal legislation. This will impose additional risks and burdens on companies tantamount to the current patchwork of privacy policies in the US which has shifted much of the privacy enforcement efforts to state attorneys general. Indeed, US companies that wish to enter or even touch the EU market will still need to dedicate substantial resources to conform with the EU AI Act, given the increased operational challenges and costs associated with compliance.

As for the work completed or in progress under the 2023 AI EO, the Rescission EO provides that the Directors of the DPC and NEC “shall review all Federal Government actions taken pursuant to the orders, memoranda, and proclamations listed in section 2 of this order and take necessary steps to rescind, replace, or amend such actions as appropriate.” On top of that, the 2025 Removing Barriers AI EO provides additional details on a review process for agency actions taken pursuant to the 2023 AI EO, including identifying “any actions taken pursuant to [the 2023 AI EO] that are or may be inconsistent with, or present obstacles to, the policy set forth in section 2 of this order” and “suspend[ing], revis[ing], or rescind[ing] such actions, or propos[ing] suspending, revising, or rescinding such actions.”<sup>[11]</sup> The EO has a sense of urgency, providing that “[i]f in any case such suspension, revision, or rescission cannot be finalized immediately, the APST and the heads of agencies shall promptly take steps to provide all available exemptions authorized by any such orders, rules, regulations, guidelines, or policies, as appropriate and consistent with applicable law, until such action can be finalized.” As many of the agencies mentioned in President Biden’s 2023 AI EO were far into their own AI initiatives (including testing and rolling out AI tools) and had dedicated significant time to developing guidance for various sectors to support AI adoption,<sup>[12]</sup> it is unclear how much of that work will be clawed back. It is also unclear whether agency initiatives, such as the AI Safety Institute housed within the National Institute of Standards & Technology (NIST), will continue to receive funding to develop AI guidelines to help companies. This introduces uncertainty for many companies who are already indexing to and following the guidelines set forth in the NIST AI Risk Management Framework.

As for intellectual property, President Biden’s 2023 AI EO did not control the actions of the Copyright Office—which is not in the executive branch. For now, there is no indication that there will be any impact on the Copyright Office’s upcoming reports on AI. And, though tasked under the 2023 AI EO, USPTO’s AI team efforts, as well as the AI/ET partnership founded under Director Kathi Vidal’s leadership, were started well before President Biden issued the 2023 AI EO.<sup>[13]</sup> The USPTO also announced last week—under the Biden Administration—a comprehensive AI strategy designed to empower responsible AI innovation while addressing legal and policy challenges. During the last administration, the USPTO was also working on additional initiatives at the intersection of AI, patents, and copyrights, as well as playing a lead driving global harmonization.<sup>[14]</sup> Though we expect the USPTO’s AI work to continue (for example, the USPTO was considering stakeholder feedback on its guidance on inventorship and patent eligibility in the AI space prior to the Rescission EO) it is unclear if the Rescission EO or Section 5 of the 2025 Removing Barriers AI EO will have any impact on that work (including because the USPTO has its own

authorities granted to it by Congress under 35 U.S.C. 2(b) to “facilitate and expedite the processing of patent applications” to which the USPTO’s inventorship and patent eligibility guidance directly relates).

Will the Rescission EO have its stated effect? Certainly, a deregulated environment will allow tech companies more leeway regarding rules and regulations at the federal level. Deregulation could increase access to capital, as already evidenced by the rise in stock prices of many tech companies following President Trump’s Rescission EO, and a subsequent spur of investment into AI startups. That said, innovation policy thrives with certainty, is global in nature and requires policy keeping up with the needs of ever and quickly evolving technology.

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[1] <https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>

[2] <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>

[3] <https://web.archive.org/web/20250118020619/https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/> (As of the publishing of this article, the unarchived link directs to a “404 Page Not Found” webpage).

[4] <https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>

[5] <https://web.archive.org/web/20250117133204/https://www.whitehouse.gov/briefing-room/presidential-actions/2025/01/14/executive-order-on-advancing-united-states-leadership-in-artificial-intelligence-infrastructure/> (As of the publishing of this article, the unarchived link directs to a “404 Page Not Found” webpage).

[6] <https://www.winston.com/en/insights-news/bidens-executive-order-on-advancing-united-states-leadership-in-ai-infrastructure>

[7] <https://www.reuters.com/world/us/trump-appoints-former-paypal-coo-david-sacks-ai-crypto-czar-2024-12-06/>

[8] 2025 Removing Barriers EO at Sec. 4 (“Within 180 days of this order, the Assistant to the President for Science and Technology (APST), the Special Advisor for AI and Crypto, and the Assistant to the President for National Security Affairs (APNSA), in coordination with the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget (OMB Director), and the heads of such executive departments and agencies (agencies) as the APST and APNSA deem relevant . . .”).

[9] 2025 Removing Barriers AI EO at Sec. 2.

[10] <https://www.reuters.com/technology/artificial-intelligence/trump-announce-private-sector-ai-infrastructure-investment-cbs-reports-2025-01-21/>

[11] 2025 Removing Barriers AI EO at Sec. 5.

[12] <https://web.archive.org/web/20250116072519/https://www.whitehouse.gov/briefing-room/statements-releases/2024/10/30/fact-sheet-key-ai-accomplishments-in-the-year-since-the-biden-harris-administrations-landmark-executive-order/> (As of the publishing of this article, the unarchived link directs to a “404 Page Not Found” webpage).

[13] <https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events>

[14] <https://www.uspto.gov/about-us/news-updates/uspto-announces-new-artificial-intelligence-strategy-empower-responsible>

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