

Big Tech's "Digital Trade" Agenda Threatens Alaska's Tech Policy Goals

Nationwide, state legislators have introduced bills to protect people from biased artificial intelligence (AI) models, online privacy violations, abuses of children and teens' data, and anti-competitive practices by tech companies—and to guarantee our right to repair our phones, cars, and other equipment.

The surge in statehouse tech legislation shows that the American people—and their elected officials at every level—want action now. But few people realize that the very firms whose conduct led to this bipartisan response have a strategy to undermine tech regulation through a stealthy form of international preemption. They want to add rules to international trade deals that limit how state and federal governments can regulate tech.



The most extreme of what these Big Tech interests misleadingly call “digital trade” rules would:

- limit governments' powers to require impact assessments, bias audits, or pre-deployment testing of even high-risk AI and other programs if this involves government regulators or independent reviewers having access to detailed descriptions of algorithms or to source code;
- forbid right to repair polices that require manufacturers to share repair tools that depend on access to code or algorithms;
- ban regulation of international data transfers, guaranteeing rights for firms to choose where our personal data moves and is stored; and
- prohibit requirements to keep certain data locally stored, for instance to keep sensitive data within the state for privacy or any other reason.

Alaskan lawmakers' initiatives to regulate the tech industry must not be thwarted by “digital trade” rules being pushed by Big Tech firms. We must ensure that tech bills in Alaska are not undermined by this plot for international preemption.

The rest of this explainer details how “digital trade” provisions conflict with specific legislation proposed in Alaska relating to the right to repair.



RIGHT TO REPAIR

“Digital trade” source code secrecy guarantees undermine market competition and consumers’ rights to access the repair tools and information needed to keep their phones, cars, wheelchairs, and other equipment operating.

In the 2023 legislative session, Alaskan lawmakers considered the Digital Right to Repair Act. If passed, this bill would have granted the owners and independent repairers of digital electronic products access to the tools necessary to perform repairs. For electronic products, these “tools” also include software, code, and other algorithmic tools:

“Sec. 45.45.800. Digital product diagnosis, maintenance, and repair.

(a) A digital product manufacturer shall, as required under AS 45.45.800 - 45.45.890, make available to an independent service provider or owner of a digital product manufactured, sold, or leased by or on behalf of the manufacturer any documentation, parts, and tools necessary for the diagnosis, maintenance, or repair of the digital product.

(b) The documentation, parts, and tools made available under (a) of this section must include any changes made by the digital product manufacturer to update, fix, or improve a computer program, including the program's data, or firmware used in the product or part.

Sec. 45.45.810. Security features. If a digital product contains an electronic security lock or other security-related feature that is disabled during the diagnosis, maintenance, or repair of the product, the digital product manufacturer shall make available to the independent service provider or owner of the product the documentation, tools, and parts necessary to reset the security-related feature. The manufacturer may use appropriate secure release systems to make the documentation, tools, and parts available.”

Right to repair laws that require manufacturers to make available to consumers and independent repair shops tools, parts, and information necessary to repair electronic products could be undermined by algorithm and source code secrecy rules since the broad definition of algorithms would encompass repair tools such as diagnosis software, firmware, and digital keys.

The good news is that very few of the hundreds of trade agreements in effect worldwide include Big Tech’s “digital trade” rules. The bad news is that Big Tech lobbyists are using their power and money to try to rig numerous trade deals that are being negotiated right now to derail the wave of tech regulation underway nationwide. To learn more, please visit: www.rethinktrade.org