

Big Tech’s “Digital Trade” Agenda Threatens Colorado’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 affirm 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.

Colorado 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 Colorado tech bills—including some measures already signed into law—are not undermined by this international preemption plot.

The rest of this explainer details how “digital trade” provisions conflict with specific Colorado policies relating to right to repair and AI regulation.



**For a detailed analysis of these “digital trade” rules, see <https://rethinktrade.org/reports/international-preemption-by-trade-agreement/>*

RIGHT TO REPAIR

The Big Tech-demanded “digital trade” rule guaranteeing source code secrecy undermines market competition and consumers’ rights to access the repair tools and information needed to keep their phones, cars, and other equipment operating.

Colorado lawmakers passed right to repair legislation for powered wheelchairs in 2022, then expanded the law to agricultural equipment in 2023 and digital electronic equipment in 2024. This law is intended to grant owners and independent repairers of electronic products access to the tools necessary to perform repairs, which may also include software, code, and other algorithmic tools:

“(a) (1) (...) an original equipment manufacturer shall (...) make available to an independent repair provider or owner of the manufacturer's digital electronic equipment, agricultural equipment, or powered wheelchair any documentation, parts, embedded software, embedded software for agricultural equipment, firmware, or tools that are intended for use with the digital electronic equipment, agricultural equipment, or powered wheelchair or any part, including updates to documentation, parts, embedded software, embedded software for agricultural equipment, firmware, or tools.”

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.

AI REGULATION

To try to avoid civil rights and liberties violations and other harms from AI systems being rushed into use, legislators are introducing bills in statehouses nationwide that require impact assessments, bias audits, or pre-deployment testing to ensure that AI models are fair and accurate. The Big Tech-demanded “digital trade” rule that bans access to source code and algorithms would forbid such reviews from being conducted by or available to government regulators or independent bodies, as many bills require.

For instance, Consumer Protections for Artificial Intelligence was signed into law in Colorado in 2024. This bill would require AI developers to share algorithm information with deployers for impact assessments:

“6-1-1702. (2) a developer of a high-risk artificial intelligence system shall make available to the deployer or other developer of the high-risk artificial intelligence system: (...) (b) Documentation disclosing: (1) High-level summaries of the type of data used to train the high-risk artificial intelligence system; (...) (3) (a) (...) a developer that offers, sells, leases, licenses, gives, or otherwise makes available to a deployer or other developer a high-risk artificial intelligence system (...) shall make available to the deployer or other developer (...) the documentation and information, through articles such as model cards, dataset cards, or other impact assessments, necessary for a deployer (...) to complete an impact assessment.”

Developers could claim that the law forces them to “share their algorithms” with third parties in conflict with “digital trade” secrecy rules. Other potentially affected measures include Restrict Insurers' Use Of External Consumer Data, signed into law in 2021, and AI Facial Recognition, signed in 2022.

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