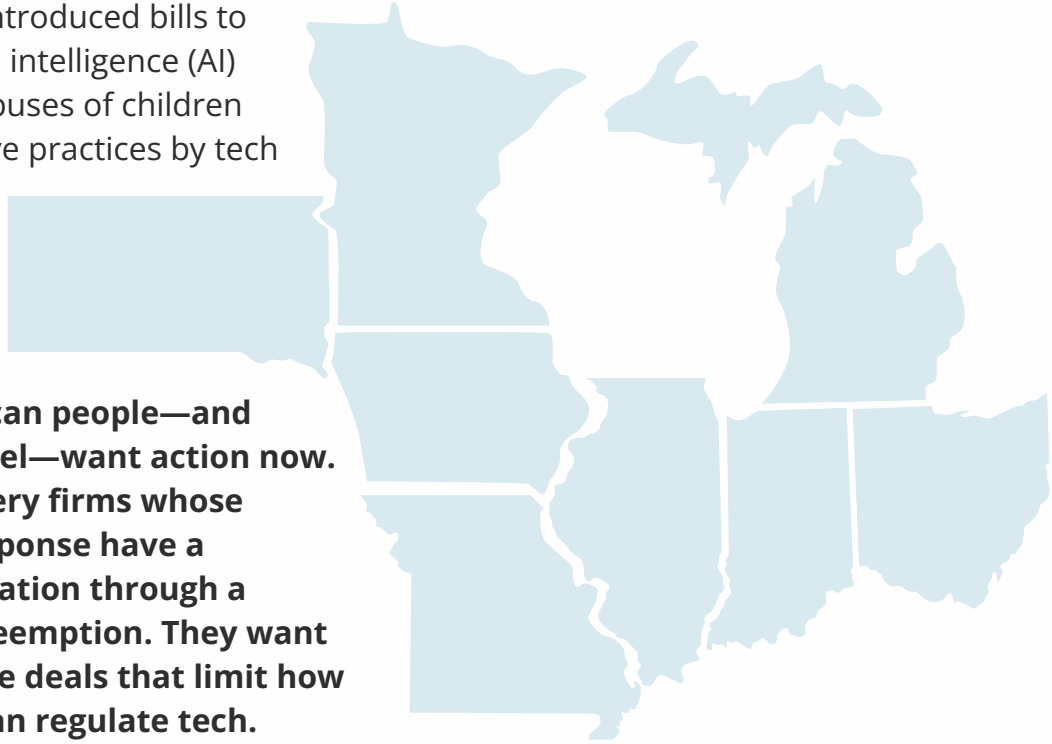


Big Tech's "Digital Trade" Agenda Threatens Midwestern States' Tech Policy Goals

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.

State 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 Midwestern states—including some measures already signed into law—are not undermined by this plot for international preemption.

The rest of this explainer details how "digital trade" provisions conflict with specific policies introduced in Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and South Dakota 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.

Minnesota’s Digital Fair Repair Act came into effect in 2024. The law grants the owners and independent repairers of digital electronic equipment access to the tools necessary to perform repairs. For electronic products, these “tools” also include software, code, and other algorithmic tools:

“Subd. 3. Requirements. (a) For digital electronic equipment and parts for the equipment sold or used in Minnesota, an original equipment manufacturer must make available to any independent repair provider or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software, for diagnostic, maintenance, or repair purposes. Nothing in this section requires an original equipment manufacturer to make available a part, tools, or documentation if it is no longer available to the original equipment manufacturer.”

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.

Multiple states in the Midwest have considered right to repair legislation for electronic products in recent years. Other proposed bills include Michigan’s 2024 Digital Electronic Equipment Repair Act; Missouri’s 2024 Digital Fair Repair Act; Indiana’s SB 53 (2023), which covered personal electronics and agricultural equipment; Iowa’s 2023 Right to Repair Act, which covered personal electronics, household appliances, and cars; Ohio’s 2023 Digital Fair Repair Act; and South Dakota’s SB 194 (2023).

Indiana’s legislature also considered HB 1155 in 2024, which would extend repair rights to agricultural equipment. Minnesota’s SB 5318/HB 4800 (2024), Missouri’s HB 2475/SB 1472 (2024), and Michigan’s 2023 Agricultural Equipment Repair Act would also apply solely to agricultural equipment. Missouri’s 2024 bill HB 2800 proposed repair rights for motorcycles and motorcycle parts.

All of these measures proposed requirements for equipment manufacturers to share repair information with the consumers and repairers of their products. If passed, these bills—and any right to repair bills proposed in the foreseeable future—could be at risk of legal challenge due to “digital trade” secrecy rules.

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