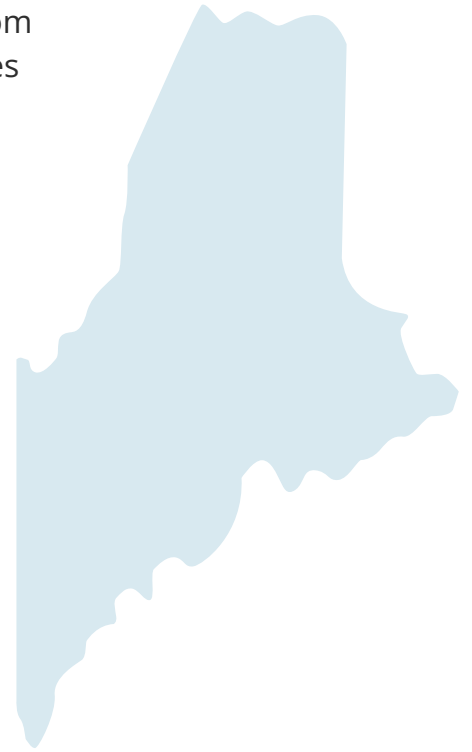


Big Tech’s “Digital Trade” Agenda Threatens Maine’s Tech Policy Goals

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.

Maine 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 Maine tech bills are not undermined by this international preemption plot.

The rest of this explainer details how “digital trade” provisions conflict with specific Maine 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.

Maine’s SP 608, which passed in the Senate in 2024, is intended to grant the owners and independent repairers of electronic products access to the tools necessary to perform repairs. For electronic products, these “tools” also include software, code, and other algorithmic tools:

"2. Requirements. An original equipment manufacturer shall, with respect to any digital electronic equipment sold or used in this State, make available on fair and reasonable terms to the owner of the equipment or to any independent repair provider: A. Parts, tools and documentation necessary to repair the digital electronic equipment, including any updates to information or embedded software (...)."

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, the Maine Data Privacy and Protection Act was considered in the 2024 legislative session. This bill would require entities using algorithms for consequential decisions to audit their algorithms, complete impact assessments, and submit annual reports on algorithm usage:

*"§9615. Algorithms. 1. Assessment required. A covered entity (...) that uses a covered algorithm in a manner that poses a consequential risk of harm to an individual or group of individuals (...) shall conduct an impact assessment of the algorithm. The impact assessment must include the following information: A. A detailed description of the design process and methodologies of the covered algorithm; (...) 2. Design evaluation. A covered entity or service provider that develops a covered algorithm that is designed to collect, process or transfer covered data shall perform, before deploying the covered algorithm, an algorithmic design evaluation to evaluate the design, structure and inputs of the covered algorithm, including training data used to develop the covered algorithm (...)
4. (...) after completing an impact assessment or evaluation under this section, a covered entity or a service provider shall submit a report of the impact assessment or evaluation to the Attorney General."*

By requiring firms to conduct impact assessments and design evaluations of their algorithms and submitting reports to the state Attorney General, the policy could be challenged by covered entities based on algorithm and source code 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