

Big Tech’s “Digital Trade” Agenda Threatens Maryland’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.

Maryland 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 Maryland 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 Maryland policies relating to AI regulation, data privacy, and right to repair.



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

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 made available to government regulators or independent bodies, as many bills require.

For instance, the [Maryland Online Data Privacy Act of 2024](#) will take effect in 2025. This law requires data controllers to complete data protection assessments and disclose them to the government upon request:

"14-4610. (B) A controller shall conduct and document, on a regular basis, a data protection assessment for each of the controller's processing activities that present a heightened risk of harm to a consumer, including an assessment for each algorithm that is used. (...) (D) (1) The Division may require that a controller make available to the Division a data protection assessment that is relevant to an investigation conducted by the Division."

By requiring firms to conduct data protection assessments covering their algorithms and allowing regulators to request them, the policy could be challenged based on algorithm secrecy rules.

DATA PRIVACY

Consumers and regulators have many new concerns about data privacy as AI systems have proliferated in all sectors of the economy. State bills aimed at preserving privacy have gained ground in recent years, including measures meant to limit the sharing of personal information.

Maryland's [HB 812/SB 786](#), passed in 2023, charges the state Secretary of Health with adopting rules on the disclosure of health data, including specific restrictions on the transfer of sensitive health data out of state:

"(3) (II) (...) the Secretary may adopt restrictions on the disclosure of abortion care or other sensitive health services under subparagraph (I) of this paragraph that are applicable only to disclosures by health information exchanges or electronic health networks to out-of-state treating providers, out-of-state business entities, other health information exchanges, or other electronic health networks."

By allowing regulators to establish restrictions on the disclosure of abortion care or other sensitive health services information to out-of-state treating providers business entities, this law could be argued as inconsistent with the “digital trade” ban on regulation of cross-border data flows.

RIGHT TO REPAIR

The “digital trade” source code secrecy guarantees wouldn't just shield AI from government oversight: they also would undermine market competition and consumers' rights to access the repair tools and information needed to keep their phones, cars, and other equipment operating.

Maryland bill [HB 712 \(2023\)](#) was intended to grant owners and repairers of farm equipment access to repair tools. For internet-connected products, these “tools” include software, code, and other algorithmic tools:

"(a) For farm equipment, or parts for farm equipment, (...) the original equipment manufacturer shall (...) make available to an independent repair provider or owner of the farm equipment documentation, parts, and tools, inclusive of any updates, for purposes of diagnosis, maintenance, or repair of the farm equipment."

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