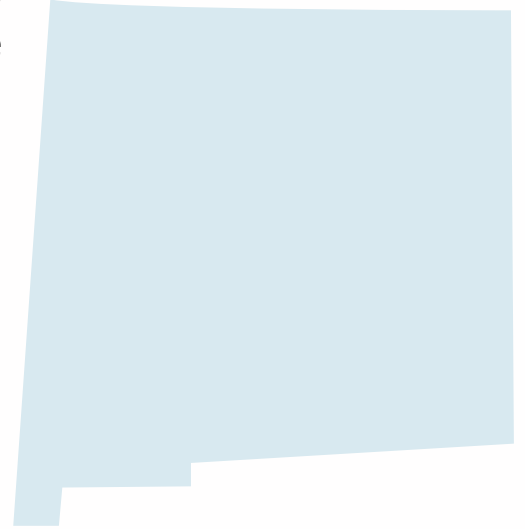


Big Tech's "Digital Trade" Agenda Threatens New Mexico's Tech Policy Goals

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.

New Mexico 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 New Mexico 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 New Mexico relating to kids' online safety.



KIDS' ONLINE SAFETY

The onset of a youth mental health crisis has driven legislators to introduce bills across several states aimed at regulating social media, some of which require reviews of social media software design. The Big Tech-demanded “digital trade” rule that bans access to source code and algorithms would forbid reviews from being conducted by or made available to government regulators or independent bodies.

In 2024, New Mexico’s state legislature considered the Age Appropriate Design Code Act. If passed, this bill would have required social media companies to evaluate if their product design may cause harm to children, and submit this evaluation to the government upon request:

*“Section 4. A. A covered entity shall: (1) complete a data protection impact assessment for any online product, service or feature that is reasonably likely to be accessed and maintain documentation of the data protection impact assessment (...)
(4) within seven business days of a written request by the attorney general, provide a data protection impact assessment to the attorney general pursuant to such a request; provided that the attorney general may, in the attorney general's discretion, extend the time allowed for a covered entity to produce a data protection impact assessment (...)
B. The data protection impact assessment required by this section shall identify the purpose of an online product, service or feature and how the online product, service or feature uses children's personal data and determine whether the online product, service or feature is designed and offered in an age-appropriate manner consistent with the best interest of children who are accessing or reasonably likely to access the online product, service or feature by examining at least the following: (...)
(4) whether algorithms used by the online product, service or feature would be inconsistent with the best interest of children reasonably likely to access the online product, service or feature (...).”*

The bill requires businesses to complete data protection impact assessments, which shall include "whether algorithms used by the online product, service, or feature could harm children." Since the state's Attorney General can demand access to the data protection impact assessments, companies could argue that the law requires them to disclose their algorithms in violation of 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