Big Tech's "Digital Trade" Agenda Threatens Oklahoma'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.

Oklahoman 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 Oklahoma tech bills are not undermined by this international preemption plot.

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

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

For instance, in Oklahoma's 2024 legislative session, the Government Modernization and Technology Committee recommended that the House pass the Artificial Intelligence Utilization Review Act. This bill would require insurers to submit AI algorithms and datasets to reduce bias in automated decisions:

> "*B. An insurer shall submit the artificial intelligence-based algorithms and training data sets that are being used or will be used in the utilization review process to the Department for transparency. The insurer shall submit an attestation to the Department, annually by December 31, in the manner and form prescribed by the Department on its website certifying that these artificial intelligence-based algorithms and training data sets have minimized the risk of bias based on the covered person's race, color, religious creed, ancestry, age, sex, gender, national origin, handicap or disability, and adhere to evidence-based clinical guidelines.*"

By requiring insurers to submit their algorithms to the Oklahoma Insurance Department for transparency, this policy would collide with source code and algorithm secrecy rules. Oklahoma's Ethical Artificial Intelligence Act, introduced in 2024, could also be challenged based on secrecy rules.

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.

Oklahoma's Digital Fair Repair Act (2023) was intended to grant 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:

> "*A. For digital electronic equipment, and parts for such equipment, sold or used in this state, an original equipment manufacturer shall make available to any independent repair provider and owner of digital electronic equipment manufacturer by or on behalf of or sold by such original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and tools required for the diagnosis, maintenance, or repair of such digital electronic equipment and parts for the 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