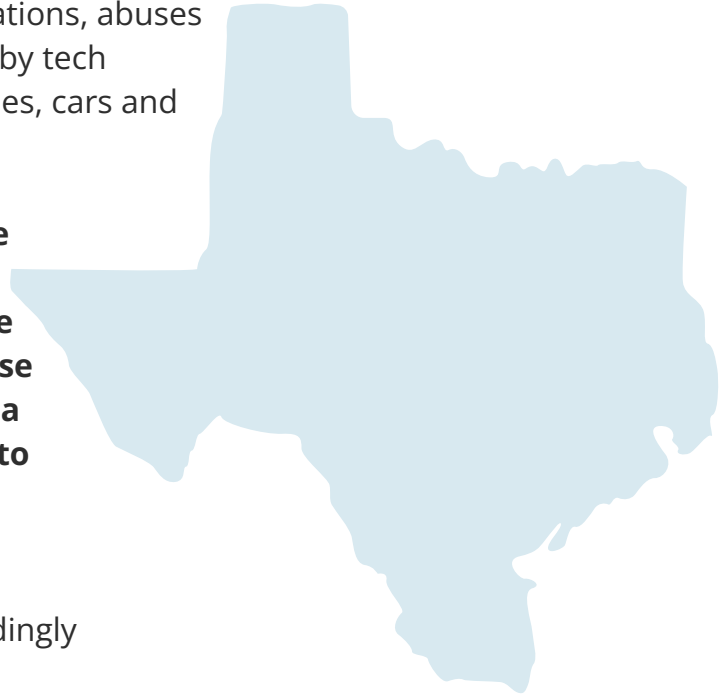


Big Tech’s “Digital Trade” Agenda Threatens Texas’s Tech Policy Goals

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.

Texas 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 Texas 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 Texan policies relating to kids’ online safety and right to repair.



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.

Texas’s Securing Children Online through Parental Empowerment (SCOPE) Act was signed into law in 2023. This act requires disclosure of algorithmic information to “independent security researchers” for any digital services that are accessed by known minors:

*"Sec. 509.053. DIGITAL SERVICE PROVIDER DUTY TO PREVENT HARM TO KNOWN MINORS.
(a) In relation to a known minor's use of a digital service, a digital service provider shall develop and implement a strategy to prevent the known minor's exposure to harmful material (...)
(b) A strategy developed under Subsection (a): (1) must include: (...)
(G) except as provided by Section 509.058, making available the digital service provider's algorithm code to independent security researchers (...)."*

If the “digital trade” rules Big Tech seeks were widely enacted, the SCOPE Act’s requirement for digital service providers—including social media companies—to make available algorithm code to independent security researchers could be attacked as a violation of the “digital trade” special secrecy guarantees forbidding disclosure of algorithms and source code.

RIGHT TO REPAIR

The “digital trade” source code secrecy guarantees wouldn’t just shield social media companies 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.

Texas bill HB 1606 (2023), would grant owners and independent repairers of electronic products access to the tools necessary to perform repairs. These “tools” include software, code, and other algorithmic tools:

*"Sec. 122.003. (a) For digital electronic equipment, including parts for that equipment, sold or used in this state, the original equipment manufacturer of the equipment or part shall make available on fair and reasonable terms to any independent repair provider or to an owner of digital electronic equipment manufactured by or on behalf of, sold by, or supplied by the original equipment manufacturer:
(1) documentation, replacement parts, and tools, including any updates to information or embedded software, for that equipment or replacement part (...)."*

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. Texas bills HB 515 (2023) and SB 1654 (2023), cover the right to repair for electronics-enabled heavy equipment and agricultural equipment, respectively. Even if passed, these bills could be challenged by “digital trade” provisions.

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