

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

Utah 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 Utahn 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 Utahn policies relating to kids’ online safety and right to repair.



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

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.

Utah’s Social Media Regulation Act came into effect in 2023. This act requires social media companies to regularly audit their algorithm designs to avoid liability for children’s social media addiction:

“(2) (...) a social media company shall not use a practice, design, or feature on the company's social media platform that the social media company knows, or which by the exercise of reasonable care should know, causes a Utah minor account holder to have an addiction to the social media platform. (...) (b) A social media company shall not be subject to a civil penalty for violating this section if the social media company, as an affirmative defense, demonstrates that the social media company: (i) instituted and maintained a program of at least quarterly audits of the social media company's practices, designs, and features to detect practices, designs, or features that have the potential to cause or contribute to the addiction of a minor user; and (ii) corrected (...) any practice, design, or feature discovered by the audit to present more than a de minimus risk of violating this section.”

By requiring firms to carry out quarterly audits of their practices, designs and features to be able to invoke an affirmative defense, social media companies could argue that this bill requires them to disclose their algorithms to third parties in conflict with “digital trade” source code secrecy rules.

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.

Utah bill SB 269 (2024) would grant owners and independent repairers of agricultural equipment access to the tools necessary to perform repairs. For electronic products, including internet-connected agricultural equipment, these “tools” include software, code, and other algorithmic tools:

“(1) For the purpose of providing services for agricultural equipment in the state, an original agricultural equipment manufacturer shall, with fair and reasonable terms and costs, make available to an independent repair provider or owner of agricultural equipment manufactured by the manufacturer: (a) documentation, parts, embedded software, embedded software for agricultural equipment, firmware, or tools; (b) with consent of the owner of the agricultural equipment, data intended for use with the agricultural equipment or a part of the equipment; or (c) an update to an item described in Subsection (1)(a) or, with the consent of the owner of the agricultural equipment, Subsection (1)(b).”

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