

Big Tech’s “Digital Trade” Agenda Threatens West Virginia’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.

West Virginia 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 West Virginia 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 West Virginia relating to the right to repair.



RIGHT TO REPAIR

“Digital trade” source code secrecy guarantees undermine market competition and consumers’ rights to access the repair tools and information needed to keep their phones, cars, wheelchairs, and other equipment operating.

In 2024, West Virginia’s state senate passed the Equipment Right to Repair Act. If signed into law, this bill would have granted the owners and independent repairers of agricultural, forestry, and lawncare equipment access to the tools necessary to perform repairs. For electronic products, including internet-connected equipment, these “tools” also include software, code, and other algorithmic tools:

“§19-39-4. Requirements.

(a) A manufacturer of equipment sold or leased, offered for sale or lease, or used in this state shall make available to any independent repair provider and owner of equipment, on fair and reasonable terms, any documentation, parts, and tools required for the diagnosis, maintenance, or repair of the equipment, inclusive of any technical updates and corrections to embedded software or information. This requirement also applies to any attachments or parts for the equipment. The documentation, parts, and tools shall be made available to any independent repair provider and owner of equipment on the same conditions, and in the same time frame, as the manufacturer makes diagnostic, service, or repair documentation available to an authorized repair provider.

(b) For equipment, attachments, or parts that contain an electronic security lock or other security-related function, the original equipment manufacturer shall make available to any owner and independent repair provider, on fair and reasonable terms, any special documentation, tools, and parts needed to access and reset the lock or function when disabled in the course of diagnosis, maintenance, or repair of such equipment, attachments, or parts. Such documentation, tools, and parts may be made available through appropriate secure release systems.”

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.

West Virginia’s House also considered right to repair legislation in 2024, the Agricultural Right to Repair Act. This bill could also be undermined by “digital trade” 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