

## DIGITAL TRADE: A PRIMER FOR PROFESSIONALS

### Highlights:

- Digital trade, or the buying and selling of goods and services online and the transmission of digital information across borders, affects practically all professionals' working and personal lives.
- Corporations are lobbying for international digital trade agreements that lock in pro-business, pro-employer rules that have already been negatively impacting workers.
- Pro-worker digital trade rules should seek to protect professionals from the harmful effects of digital trade, including but not limited to offshoring computer-based jobs, digital workplace monitoring, digital theft of creative works, and the misappropriation of digital likenesses.
- When professionals join together in union, they can have a say in not just the development of digital trade rules, but also the digital policies at their workplace.

Today, most professionals' work and livelihoods are directly impacted by the laws and rules that govern the use of digital technologies worldwide. This fact sheet provides a primer on digital trade and how digital trade rules affect professionals' working and personal lives. The fact sheet also highlights how, by joining together in union, professionals can have a say in both their workplaces and halls of government to ensure that digital trade improves the lives of working people, not just employers.

### Increased Attention for Digital Trade

Given technology's global reach, the international rules governing digital trade – the buying and selling of goods and services online, as well as the transmission of digital information across borders, or cross-border data flows – are particularly critical. Digital trade is garnering increased attention among policy makers,<sup>1</sup> moving from just one of many chapters in trade agreements<sup>2</sup> to a primary focus as the



<sup>1</sup> See, e.g., “Carper, Young, Colleagues Introduce Bipartisan Resolution to Promote the U.S. Digital Economy and Digital Trade,” Press Release (July 28, 2022),

<https://www.carper.senate.gov/public/index.cfm/pressreleases?ID=F71C4B63-BDC4-4A3F-B56F-1963768C828C>.

<sup>2</sup> For examples, see the US-Japan Digital Trade Agreement and the United States-Mexico-Canada Agreement (USMCA).

digital economy<sup>3</sup> continues to rapidly expand. For instance, digital trade features prominently in the trade pillar of the Indo-Pacific Economic Framework for Prosperity (IPEF), which the United States is currently negotiating with 12 of the 13 IPEF countries.<sup>4</sup>

As policymakers increasingly emphasize digital trade, it is critical that they hear from professionals because digital trade rules affect their working lives. Corporations are lobbying for international trade agreements that lock in pro-business, pro-employer rules. Experience from past trade deals demonstrates that, once adopted, these business-friendly international trade rules make it extremely difficult for countries to pass future laws that protect working people and their families from the harmful consequences of unchecked corporate greed. Ultimately, the result is that there is little ability to safeguard the transmission of data across borders or technologies involving artificial intelligence (AI) that are rapidly advancing without society yet knowing the full ramifications. When working people have input, digital trade rules can promote and strengthen the economy and at the same time protect professionals.

## Digital Trade Rules Impact Professionals

Here are the issues that should inform resilient, long-lasting, pro-worker digital trade rules, and how digital trade can directly impact professionals in the workplace:



### *Offshoring and outsourcing*

Trade-enabled offshoring and outsourcing<sup>5</sup> are not new business practices; however, the extent of professional jobs at risk of shifting overseas has greatly expanded. Since the COVID-19 pandemic, the risk has become even greater, as many professionals' jobs transitioned to fully remote work.<sup>6</sup> Today nearly any professional whose job involves computer applications is at risk of corporations moving their job to countries with lower wages and fewer labor protections.

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<sup>3</sup> For a definition of digital economy, see Tina Highfill and Christopher Surfield, “New and Revised Statistics of the U.S. Digital Economy, 2005–2020,” Bureau of Economic Analysis, U.S. Department of Commerce (May 2022), p. 4,

<https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf>.

<sup>4</sup> The Indo Pacific Economic Countries include the United States, Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand, and Vietnam. As of October 2022, every IPEF country but India has agreed to participate in the trade pillar.

<sup>5</sup> Offshoring is the shifting overseas of jobs that were once done domestically, whereas outsourcing involves contracting a specific process to a third party that specializes in that process.

<sup>6</sup> Andrew Van Dam, “The Remote Revolution Could Lead to Offshoring Armageddon,” *The Washington Post* (26 Aug 2022); and Rani Molla, “The Future of Remote Work, According to Six Experts,” *Vox* (July 24, 2022): <https://www.vox.com/recode/23205039/future-remote-work-experts-promotion-recession>.



## *Digital privacy*

Essentially any Internet-connected device or software can track and collect user information. In the workplace, the tracking and collecting of user information translates to digital monitoring of employees. Employer-administered digital communications and digital information management are generally the employer's property and, in non-union workplaces, can be subject to unlimited, undisclosed monitoring. Because surveillance and monitoring are mandatory subjects of bargaining, union professionals have the right to negotiate with their employer over digital workplace surveillance.

Bossware is automated employee monitoring software that employers can use to track the activities of their employees. Employees often do not know that their bossware-enabled computer or device is tracking their activities, including their keystrokes. Bossware is now the norm in a variety of jobs, and since the start of the COVID-19 pandemic, a growing number of companies have deployed bossware to surveil employees working remotely, both on and off the clock.<sup>7</sup>

Bossware threatens the mental and physical wellbeing of professionals, making them feel like they are constantly falling behind due to oppressive performance metrics. Monitoring software can also lead to discrimination against people with disabilities who may work at a different pace or require alternative working conditions than their differently-abled coworkers.<sup>8</sup>

Digital trade rules can determine if countries are able to address the unconstrained nature of cross-border digital workplace monitoring. For instance, a trade agreement could make future technological governance difficult if passing domestic legal safeguards means that the U.S. is out of compliance with the trade agreement and subject to penalties. Resilient digital trade rules must provide public policy space for U.S. professionals to protect their interests now and as novel issues arise in the future.

In addition, employee wellness programs, wearable technology, and self-tracking devices can collect personal biometric and medical information about employees. With this "datafication" of employee health, personal data can end up in the hands of a third party<sup>9</sup> and be used to develop other algorithms without the employee's knowledge. It is often unclear who

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<sup>7</sup> Bennett Cypher & Karen Gullo, "Inside the Invasive, Secretive 'Bossware' Tracking Workers," *Electronic Frontier Foundation* (June 30, 2020), <https://www.eff.org/deeplinks/2020/06/inside-invasive-secretive-bossware-tracking-workers>.

<sup>8</sup> Matt Scherer, "Warning: Bossware May be Hazardous to Your Health," Center for Democracy and Technology,

<sup>9</sup> Elizabeth A. Brown, "A Healthy Mistrust: Curbing Biometric Data Misuse in the Workplace," *Stanford Technology Law Review* 23.2 (2020).

owns the digital information generated by the devices or apps – the employee, the employer, or the company that created the technology<sup>10</sup> – a legal uncertainty that generally leaves employees without options for recourse.



### ***Cybersecurity***

An employer’s approach to data storage can pose security risks, as many employers contract data localization services to third parties, some of whom are overseas in countries that lack rigorous data privacy and security standards. Robust cybersecurity and digital trade policies represent two sides of the same coin; they can simultaneously strengthen international cooperation and promote secure and resilient information systems.



### ***The co-opting of creative control***

Computer-automated and artificially intelligent systems can control work processes without any human input or intervention. For-profit companies based around the world have developed AI-driven software that can generate not only legible content, but also content that is complex, creative, and deceptively naturalistic. AI software is even finding its way into the classroom. This software can “write” K-12 lesson plans, replacing the teachers’ creative control over their classrooms, as well as their hard-earned skills and expertise.<sup>11</sup> Digital trade rules will influence how AI software for creative control is deployed in workplaces. In the case of education, these rules will influence how much creative control teachers have in their lesson plans, where the digital data collected from K-12 students is stored, who has access to that data and how it gets used, and other important factors that affect the lives of students and education professionals. When union professionals are part of trade policy discussions, they can help shape the future of work.



### ***Copyright, digital theft, and misappropriation***

Creative works can now be stolen and transmitted illegally at rapid speeds and in ever increasing quantities. Stolen or otherwise illegitimate content undermines the value of creative professionals’ work, threatens their hard-won pay and benefits, and puts future job opportunities at risk.<sup>12</sup> In today’s digital era, creative professionals need strong copyright

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<sup>10</sup> Skyler R. Berman, “Bargaining Over Biometrics: How Player Unions Should Protect Athletes in the Age of Wearable Technology,” *Brooklyn Law Review* 85:2 (2020).

<sup>11</sup> For more on AI in education, see, e.g., Alex Beard, “Can Computers Ever Replace the Classroom?” *The Guardian* (19 March 2020):

<https://www.theguardian.com/technology/2020/mar/19/can-computers-ever-replace-the-classroom>; Daniel Schiff, “Out of the Laboratory and into the Classroom,” *AI and Society* 36 (2021): pp. 331-48; and Rob Weil, “Jasmine’s Day: An AI Education Story,” *New England Journal of Public Policy* 34.1 (2022).

<sup>12</sup> “Intellectual Property Theft: A Threat to Working People and the Digital Economy” (2021.) DPE.

<https://www.dpeaflcio.org/factsheets/intellectual-property-theft-a-threat-to-working-people-and-the-economy>

protections to earn a fair return on their work and ensure continued job opportunities. U.S. trade agreements should not include outdated, overbroad safe harbor provisions modeled on Section 512 of the Digital Millennium Copyright Act. Due to a series of harmful court decisions, Section 512, which was originally intended to create a narrow protection to a nascent industry, now acts as a nearly free pass for platforms to profit from stolen or otherwise illegitimate content posted by third parties. When U.S. trade agreements include an online safe harbor rule similar to Section 512, they allow stolen or otherwise illegitimate content to proliferate across the globe.

Along with content theft, union creative professionals too often experience their voices, images, and likenesses misappropriated for use in unauthorized AI-generated online content. The reality is that AI is advancing more rapidly than society can fully evaluate the technology's impact. What is already clear are the dangers and downsides, including image-based sexual abuse, misappropriation for commercial gain, and the proliferation of disinformation using known public figures without their consent. The U.S. should therefore not include in trade agreements a provision modeled on Section 230 of the Communications Decency Act, which allows online platforms to avoid responsibility for unlawful user content they themselves facilitated or profit from. Inclusion of Section 230-type language in U.S. trade agreements is a mistake that makes it difficult to establish safeguards against content that puts ordinary people, including DPE unions' members, at risk.

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Professionals need not feel that the dynamics of the digital economy are beyond their control. By joining together in union, professionals can have a say in the development of trade rules. For instance, through the Labor Advisory Committee for Trade Negotiations and Labor Policy, union professionals can advise the U.S. government on matters of international trade, providing input *before* the U.S. enters into trade agreements.<sup>13</sup> Even more importantly, through collective bargaining, union professionals have a say in the digital policies at their workplaces. No matter what may end up in trade agreements, the contracts that union professionals negotiate with their employers contain legally binding rules that protect employees from adverse employer actions.

Here are a few examples of how union professionals are using their collective power to secure legally binding workplace protections in the Internet age:

- Preventing the offshoring of computer-based jobs
  - Tech professionals at Google contractor, HCL America, Inc., members of the United Steelworkers (USW), negotiated contract language that establishes a

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<sup>13</sup> LAC Charter, May 2020, <https://ustr.gov/sites/default/files/files/LAC%20Charter%20052020.pdf>.

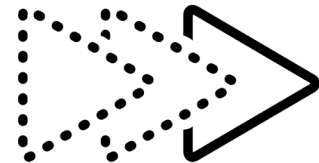
minimum number of jobs at their Pittsburgh-based location after HCL tried to offshore computer-based work to Poland.<sup>14</sup>

- Combating intrusive digital surveillance
  - Kickstarter employees, members of Office and Professional Employees International Union (OPEIU) Tech Workers Union Local 1010, negotiated a contract provision that prohibits their employer from actively observing an employee’s keystrokes, keeping track of how long the employee may be away from the computer, and monitoring the employee’s activity through their computer camera or microphone.<sup>15</sup>
- Protecting digital privacy
  - Members of the International Association of Machinists and Aerospace Workers (IAMAW) have developed contract language that seeks to curb an employer’s ability to use the data it collects through electronic surveillance.<sup>16</sup>
- Putting an end to the misappropriation of digital likenesses
  - All contracts for Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA) members working in areas involving AI include terms that protect the performer’s right to consent (or not to consent) to use of their digital likeness, among many other protections.<sup>17</sup>

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## What’s ahead for digital trade?

The digital economy is still evolving, and the development of digital trade rules will continue into the future. Professionals can ensure that they have input into the development of digital policies – both what gets negotiated into trade agreements and the rules governing individual workplaces – by joining together in union. The collective power of a union can ensure for working people that the digital economy works for everyone, not just wealthy corporations.



For more information on issues impacting professional and technical employees, visit DPE’s website: [www.dpeaflcio.org](http://www.dpeaflcio.org)

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<sup>14</sup> USW-HCL America, Inc. Collective Bargaining Agreement, 2021.

<sup>15</sup> OPEIU Tech Workers Union Local 1010-Kickstarter Collective Bargaining Agreement, 2022.

<sup>16</sup> “Protecting Worker Privacy: Electronic Surveillance Contract Language,” IAM Strategic Resources and Legal Department,

[https://actionnetwork.org/user\\_files/user\\_files/000/042/101/original/Protecting\\_Worker\\_Privacy\\_Electronic\\_Surveillance\\_Contract\\_Language\\_by\\_IAM\\_Strategic\\_Resources\\_Legal\\_Department.pdf](https://actionnetwork.org/user_files/user_files/000/042/101/original/Protecting_Worker_Privacy_Electronic_Surveillance_Contract_Language_by_IAM_Strategic_Resources_Legal_Department.pdf)

<sup>17</sup> “Entertainment in the Age of AI,” *SAG-AFTRA* 11.3 (Summer 2022): pp. 42-44.

The Department for Professional Employees, AFL-CIO (DPE) comprises 24 national unions representing over four million people working in professional and technical occupations. DPE's affiliates represent teachers, physicians, engineers, computer scientists, psychologists, nurses, university professors, actors, technicians, and others in more than 200 professional occupations.

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