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Feedback on Privacy “Trust Site” Content

Daisy Bennett, Instructure’s recently hired legal counsel specializing in privacy, created a “trust site,” or a site that works to increase transparency by fully explaining Instructure’s privacy policy and data practices in plain language and for different audiences.

Is there anything that could be added? Is it organized in a way that makes sense? Daisy will use feedback to improve the site, so if you’re interested, please feel free to include your feedback in the table below!

Note: All feedback should be constructive in nature. If you have questions/concerns about Instructure’s privacy or data practices themselves, please add it to the [“Questions for Instructure”](#) table below instead.

Link to trust site: <https://www.instructure.com/canvas/privacy/institutions-educators>

Feedback

Questions for Instructure

Since this is a community effort and prioritizes the inclusion of a variety of voices representing a variety of institutions, please add general questions below that you’d like addressed by Instructure. Specifically, add questions you have regarding the protection of student data and the ability for students to opt out. Within reason, I will do my best to ask them and obtain answers.

--Cristina Colquhoun
(I’ve used “CC” below to note where I’ve interjected comments or answers, almost always relaying them from conversations with Instructure)

#	Question	Person asking (NOT required)	Answer
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1	Re: repeated claims that individual users "own" their data, a question about individual student data: How can an individual student export their individual Instructure data (i.e. data related to their individual activities as a student logged on to a given course) after a course is completed so that they have a copy but so that Instructure cannot use that data for other purposes in the future?	Laura Gibbs	CC, 2/25 - Will be discussed by Privacy Advisory Group. CC, 4/13/20 - Under GDPR, individuals have the "right to be forgotten." Since Institutions may be legally bound to retain certain data, requests for data deletion are funneled through the institution, who then decides if it can be deleted and gives the OK to Instructure to delete if so. Typically, institutions have guidelines in place for this. Question back to Laura - What specific data do you envision students being able to download? <i>April 13 2020. Thank you! Have you given institutions an option to initiate that request procedure from INSIDE Canvas so that users will be able to do that as part of their Canvas experience? Making it part of user settings would be excellent.</i> <i>Also, that would allow users to signal Instructure that the data should not be used for research/development purposes, completely aside from whatever institutional data retention requirements are in place. I wrote about purpose limitation here: Purpose Limitation.</i> <i>Download data: if students do substantial writing in the Discussion Boards, they might want to download that, just as one example.</i> CC, 8/26 follow-up from Daisy: For data export, Canvas currently doesn't have an automatic process. As a note, there's two types of data that are saved: Log data, and data associated with the login. Log data are details about how users use the system and are saved in aggregate form (& not associated with a user). Login details are associated with a user and a time stamp, and are usually the types of details a professor can see regarding a student. You can, however, request that your data be deleted. To do so, submit a request to privacy at instructure dot com. The email goes to customer support where a ticket is created and, based on the type of account that makes the request, it is likely shared with the institution to decide its path forward. Institutions typically have policies in place for deleting data, so requests must be funneled through them.
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2	Re: repeated claims that individual users "own" their data, a question about individual instructor data: How can an individual instructor export their individual Instructure data (i.e. data related to their individual activities as an instructor logged on to a given course) after a course is completed so that they have a copy but so that Instructure cannot use that data for other purposes in the future?	Laura Gibbs	CC, 2/25 - Will be discussed by Privacy Advisory Group. CC, 4/13/20 - Under GDPR, individuals have the "right to be forgotten." Since Institutions may be legally bound to retain certain data, requests for data deletion are funneled through the institution, who then decides if it can be deleted and gives the OK to Instructure to delete if so. Typically, institutions have guidelines in place for this. Question back to Laura - What specific data do you envision instructors being able to download? <i>April 13 2020. Instructors might have provided substantial feedback to students in a course, just to take one example, or they might have done substantial writing in the discussion board as students do. As for data retention by institutions AND data repurposing by Instructure, see comments above. We need to be able to indicate in our account settings our request to 'be forgotten' (within limits of institutional retention) and also our request to be not be used for Instructure research and development purposes (i.e. purpose limitation).</i>
3	What will "opt out" look like for users or organizations who do not consent to the monetization of their data?	Ian Linkletter	"Instructure is forming a Privacy Advisory Group made up of reps from institutions including admins, faculty, & staff as well as experts in privacy. They'll be exploring a variety of privacy-related issues including the interest in an opt-out feature for students." Not mentioned in this commitment (which is only exploratory and not speedy) is opt out for <i>instructors</i> as Laura Gibbs has requested, or organizations as I asked. 01/22/20 update: Cristina to join the group, and advocates for students and marginalized voices to be represented too: https://twitter.com/call_hoon/status/1220071977131618306 CC, 2/25 - Will be discussed by Privacy Advisory Group. CC, 8/26 follow-up from Daisy: Instructure doesn't monetize data at all, not

			even data from people who visit the public website.
4	What processes exist for ethical use of Canvas data? How do research ethics governance groups at our institutions provide proposal feedback and approval?	Ian Linkletter	CC, 2/25 - Will be discussed by Privacy Advisory Group. CC, 4/13/20 - There currently isn't anything in place, but Instructure is working on a proposal currently. It will follow the same policies institutions follow and they'll share with the community what this will look like. CC, 8/26/20, note from Melissa- Instructure will never, ever use personally identifiable information (PII) for research.
5	How will data be made available to the 72 other companies owned by Thoma Bravo?	Ian Linkletter	01/17/20 Update: "Thoma Bravo shares Instructure's mission to innovate responsibly. We also share the idea that educational technology is a powerful learning tool, and it is of utmost importance to protect the data on Instructure's platform. We commit to being transparent in our data usage, protecting user privacy, and leading by example. We do not—and we will not—share or sell student data. And we will never share user data with other companies in the Thoma Bravo portfolio." - Holden Spaht, Managing Partner, Thoma Bravo This statement is fully quoted in this tweet (could not find another copy online) and partially quoted in EdSurge article. THOMA BRAVO STATEMENT IS NOT LEGALLY BINDING (OR POSTED ON THEIR WEBSITE) In legally binding form, this invalidates the Affiliates Clause from Instructure's Canvas Privacy Policy. Instructure can remove this from their Privacy Policy now (while they are currently updating it), and doing so would signal confidence in the sale to Thoma Bravo. It would prove to the education community that student data is not for sale.

6	Once data is transferred between affiliated companies, how does “opt out” function in relation to all the other copies?	Ian Linkletter	The Thoma Bravo statement says that “user data” will never be shared with other companies in the Thoma Bravo portfolio. It does not rule out the development of data-driven “algorithms” (described by Instructure CEO Dan Goldsmith in July 2019) and projects from within Instructure for transfer and sale by other companies in the portfolio. Instructure’s DIG initiative consists of a team dedicated to monetizing the user data inside Canvas. We need clarity around whether this team will be monetizing user data, including to other Thoma Bravo-owned companies. The EdSurge article shows that Instructure responds to Cristina’s quotes about <i>monetization</i> of data by talking about how they will not <i>sell</i> student data. We need more clarity here - we have been asking for 10 months - will there be an opt out for users and institutions around the monetization of their data? CC, 8/26/20 - Follow up question for Ian from Daisy/Melissa- Was this question specific to Dig? Or monetization of any data within Instructure? Institutions’ Terms of Use protect against monetization of data. Instructure can only do with data what institutions will allow, and institutions do not want them to monetize their data. If Instructure just decided to do this one day, they’d be in breach of contract.
7	If our data leaks, who is responsible, and what are their responsibilities?	Ian Linkletter	CC, 2/25 - There are policies in place. Melissa is digging into this. CC, 3/5/20 - From Melissa: If there is a data leak, there are protocols in place based on individual institutional contracts, as is the way the institution is notified. Instructure is ISO certified, which requires certain legal responses from them. The data management plans in place will be specific to each institution’s contract and adhere to that institution’s specific policies. Melissa can’t legally talk about what’s in individual institutions’ contracts, so you must contact your institution specifically if you have questions about the contract. (<i>Cristina’s side note</i>: this is yet another reason it’s incredibly important for each of us, if able, to speak directly with

			our institutions about our concerns!) CC, 8/26/20 follow up: Daisy assures us that their security practices are incredibly robust and listed openly on their website. Melissa will be setting up a security Q&A call with Josh Blackwelder for us.
8	Would like a clear explanation of what past, present, and future plans are for the data that has been described as “data hoarding” in the past.	Matt Crosslin	CC, 2/25 - Melissa is digging into this. MC, 3/6 - The comment that I remember was from a Canvas representative at the Learning Analytics and Knowledge conference 2019 during a promo from the stage. Some of that conversation was captured here: https://twitter.com/grandeped/status/1103686038201888768
9	Would like a response to the investigation by Bill Fitzgerald on the connection to Google Adtech identifiers. Why was that there, why did it disappear, why was it not disclosed, and how will it be disclosed in the future? https://www.funnymonkey.com/2019/personal-email-school-require-d-software-and-ad-tracking	Matt Crosslin	@Matt Crosslin did you hear from Instructure on this issue? CC, 3/5/20 - From Melissa: within 24 hours of this blog post, Instructure investigated and disabled the data collection feature for Google Signals that allowed this to happen. It was a human error associated with the complexities of Google Analytics. Instructure did reach out to Bill directly to let him know it had been fixed. Bill did update his blog post. CC, 4/13/20 - Update re: question about 3rd party LTI tools/integrated apps - It is up to an institution to allow users to integrate an LTI app. Instructure shares info to help institutions make these decisions, but institutions ultimately decide what they'll make available within Canvas (Cristina's note - you should absolutely follow-up with your institution if you have privacy concerns (or other concerns) about a particular app being used! Perhaps see if your institution has guidelines they follow for which to allow?). There's a small handful of programs that are white-labeled in Canvas, meaning they're included by default, such as Big Blue Button and Badger. These adhere to all the same standards/privacy policy as Canvas and only use data that's required for providing their service and nothing outside of that. Melissa is following up to see if any of the white-labeled ones have a voluntary opt-in to help with research.
10	Do you plan to ask parents'		CC, 2/25 - Instructure is bound by COPPA laws, which individual districts

	permission to use the data of students in K-12 settings? How will you explain to parents the uses to which their children's data will be put? Will parents have a right to opt out completely?		are responsible for following, and doesn't collect K-12 PII.
11	How are instructors' data being used? Are there protections in place for instructors' intellectual property (authored course documents including syllabi and readings) that are loaded into Canvas for instruction?		
12	If students reveal any personal content in the course of written assignments, how can/will that content be removed from datasets to maintain students' right to privacy? Can students opt out of the use of any of their writing?	Marc Lentini (cosign, at least)	

13	with Thoma Bravo. Each entered into the process arrangement with or a management regarding possible plans for open Instructure. Management authorized by the Board engage with bidders to diligence inquiries and negotiations regarding terms and participation were directed through its financial and legal a What does this mean for open dialogue with us, the user base?	Shared for another community member	
14	What, if any, strictures will Instructure put on its clients vis-a-vis use of Canvas-gathered data? For example, is Instructure willing to feed data to the highly-surveillant Unizin Common Data Model?	Dorothea Salo	CC, 3/5/20 - From Melissa: In these instances where Instructure partners with companies like Unizin, Instructure is not directly contracted with the institution. Instructure contracts with the 3rd party (e.g., Unizin) and provides its Instructure services. The 3rd party (e.g. Unizin) contracts with the institution and can use the data and services provided by Instructure in ways dictated within their contract with the institution. Yes, Unizin does have the common data model, but that is between them and the institution. (<i>Cristina's side note</i>: this is yet another reason it's incredibly important for each of us, if able, to speak directly with our institutions about our concerns!)
15	What protections does/will Instructure include against	Marc Lentini	(Some of this is answered in the contract language. Could it be stronger? Probably. I don't even play a lawyer on TV).

	government/law enforcement requests for student created content, such as discussion posts and email?		CC, 3/5/20 - From Melissa: The institution is fully and legally responsible for handling these requests with law enforcement and Instructure must always defer to them. Instructure legally cannot address them unless it has to do directly with Instructure the company. (<i>Cristina's side note</i> : this is yet another reason it's incredibly important for each of us, if able, to speak directly with our institutions about our concerns!)
16	What protections will Instructure provide against algorithmic discrimination in algorithmically-driven products such as DIG? And other items in the TB portfolio?	Marc Lentini	CC, 4/23 - They're discussing this internally at Instructure right now.
17	What options are/will be available for institutions to remove or sanitize student and faculty data after a certain period of time?	Marc Lentini	
18	What processes might the Privacy Advisory Group have to seek input from a broader group of folks and institutions about proposed changes to Instructure's policies and practices? For example, will they commit to a quarterly open phone call or webconference?	Amy Collier	

What does “legally-binding” look like to you?

Cory asked us to clarify what we mean in our list of demands by “legally-binding” statements. I spoke for what “legally binding” meant to me, but that I wanted to get feedback from the Community as well since this could look differently for different institutions and contracts.

Add your thoughts here:

Name	Thoughts on what “legally-binding” means/looks like
Cristina Colquhoun	Even with strong ethical commitments from a company, privacy laws are inadequate to legally protect students and protect their data from being used in unintended ways. While we’re grateful for the ethical commitments Instructure has made in the past to protect students and their privacy, it’s not enough to protect them legally once the company is sold. I envision “legally binding” to mean irrevocable language found in both the Terms of Service and Privacy Policies that delineate the protection of student data and access to it. Statements such as “subject to change at any time” or ones that allow vendors and 3rd parties to have privileges with student data <i>should not be included as caveats</i>.
Ian Linkletter	A legally binding commitment is one that would be illegal to break. Instructure and Thoma Bravo can permanently earn trust from customers by codifying promises into policy. Lots of companies have “values.” But ours are different. Because we actually live by them. Values can be more than a lifestyle, they can be part of the DNA of an organization. I want Instructure to make unethical corporate behaviour illegal forever through legally-binding commitments that never expire. A list of we will never statements every time a user agrees to the Terms of Service would be legally-binding because the user consent would be invalidated should the company break its word. The only way this works is to be specific. “We will never sell your data” is not specific enough. Don’t be Facebook. Make yourself vulnerable on purpose. “Legally-binding” can be a source of strength for the company. Giving users the ability to agree or not agree to

	specific uses of their data makes consent meaningful, which strengthens your legal ability to conduct research. As privacy laws become more diverse all over the world, a consent infrastructure for ethical use of data will only serve the company. The ability for individual users, units, and institutions to opt out of data monetization will help you stay in compliance with laws as they change.
Matt Crosslin	I think “legally-binding” is a pretty self-explanatory term. I agree with the statements above. I would be concerned about the goal in defining this term as an effort to find ways to wiggle around difficult constraints that the company wants to ignore. If you want to make your customers feel valued and secure, then seek a straight forward view of “legally-binding” and don’t look for ways to create loop holes.
Marc Lentini	I wonder if this should be a two-part initiative. Legally binding is helpful, but could something like this be codified into the system, and if so, should it? What if administrators had the option to set a timeline for data to be sanitized, then deleted. (Or what if we didn’t have the option... what if Canvas and related tools just automatically did it?)
Steel Wagstaff	My own two cents, as someone who worked at a university for many years and now works for an edtech provider: whenever an institution purchases a tool/service, there’s typically a legal contract that establishes terms, expectations of service, a service level agreement, privacy policy, etc. Many schools will require cloud providers to complete a HECVAT or similar form, agree to various privacy/security policies, attest to or certify compliance with state or local requirements, share a VPAT or other accessibility review, etc. <i>prior</i> to completing a purchase. Many vendors will also have standard replies or standard contracts that they send to schools to begin negotiations. These contracts are not legally binding until two parties have modified and agreed to them. I don’t see how a company can have a “legally binding” one-way agreement. They can however have a published policy, or can share a sample terms of service, service level agreement, HECVAT form, VPAT, etc. At Pressbooks, for example, we provide some of these documents on our website for anyone to view: https://pressbooks.com/pressbooksedu-licensing-information/. I’m not as familiar with Instructure’s practices, but was able to quickly find their published VPAT: https://www.instructure.com/canvas/accessibility; product privacy policy: https://www.instructure.com/policies/privacy; marketing privacy policy: https://www.instructure.com/policies/marketing-privacy; and data processing policy: https://www.instructure.com/policies/data-processing. As activists, perhaps our goal would be advocate for specific desired changes to these official, published policies and then to ask for and seek more details locally about the specific contracts signed between our institutions and ed tech providers (where the contracts <i>are</i> “legally binding”)

Links to Tweet Summaries of Calls

January 9, 2020: https://twitter.com/call_hoon/status/1215401817015832590?s=20
 January 13, 2020: https://twitter.com/call_hoon/status/1216866133615304706?s=20
 January 17, 2020: https://twitter.com/call_hoon/status/1218239500553461760?s=20
 January 21, 2020: https://twitter.com/call_hoon/status/1220071976028508160?s=20
 January 31, 2020: https://twitter.com/call_hoon/status/1223397905421258753?s=20
 February 5, 2020: https://twitter.com/call_hoon/status/1225118209453568004?s=20
 February 14, 2020: https://twitter.com/call_hoon/status/1229452626800074758?s=20
 February 19, 2020: https://twitter.com/call_hoon/status/1230206648767131649?s=20 (an update rather than a call summary)
 March 2, 2020: https://twitter.com/call_hoon/status/1234627531363487745?s=20
 March 5, 2020: https://twitter.com/call_hoon/status/1235676669530312704?s=20
 April 13, 2020: https://twitter.com/call_hoon/status/1249774757031096322?s=20
 April 23, 2020: https://twitter.com/call_hoon/status/1253440606770266113?s=20
 May 15, 2020: https://twitter.com/call_hoon/status/1261407351162023936?s=20
 June 17, 2020: https://twitter.com/call_hoon/status/1273314866472931335?s=20
 July 6, 2020: https://twitter.com/call_hoon/status/1280272427705143297?s=20
 August 26, 2020: https://twitter.com/call_hoon/status/1298725339821203456?s=20
 September 11, 2020: https://twitter.com/call_hoon/status/1304535337939677185?s=20