Chapter 6
Privacy and Data Rights for Adult English as a Second Language (ESL) Students

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ABSTRACT

In the USA, instructors need to ensure the user privacy and data rights of their adult English as a second language (ESL) students. The ways in which educational technology (EdTech) companies track user activity and sell user data to third parties raises ethical concerns for student privacy and data rights. ESL students are particularly vulnerable because of the vague language in privacy policies and user agreements, differences in terms of state surveillance, and insufficient user privacy and data protections. In addition to a discussion on the ethical concerns within EdTech and higher education, one method and two tools to help ESL instructors and educators are provided. These assist with ESL or international students in their classrooms as a means to evaluate EdTech tools and make decisions on whether to adopt or require a digital tool.

INTRODUCTION

After downloading a new application to their phone or computer, users will—more often than not—quickly scroll to the bottom of the small-print terms and conditions to hit the "agree" button without a second thought. Similarly, when visiting a new website, there is a propensity to agree to "accept all cookies" and dismiss annoying pop-ups as quickly as possible.

Recent documentary films, such as *Coded Bias* (Kantayya, 2021) and *The Social Dilemma* (Orlowski, 2020), have exposed the American public to issues of data security, public surveillance, and the danger of unregulated tech. While both documentaries raise concerns that modern-day digital citizens (Ribble & Baley, 2007) should consider before engaging with technology, the effects of these stories on user behavior are underexplored. Rather, these documentaries highlight the small gains activists have made

in policy changes and show the need "to take on the massive amount of work still left to be done" (Han, 2020, para. 13).

Less attention has been given to similar issues in student data and users of educational technology (EdTech). EdTech is a term that encompasses software and applications with activities that allow for practice and lead to learning gains inside and out of the classroom (Lestari & Subriadi, 2021). The EdTech industry has expanded to an estimated market size of over $100 billion per annum ("Education Technology Market Size," 2022). Despite best intentions, EdTech companies perpetuate the educational achievement gap—making already marginalized populations even more so (Macgilchrist, 2019; Reich, 2020). Industry regulation varies significantly from country to country, meaning that research into the ramifications of EdTech's rapid expansion is usually contextualized by location in addition to grade level (i.e., K-12; higher education).

In the context of higher education in the United States of America, student digital records are protected under the Family Educational Rights and Privacy Act of 1974 (FERPA) (Checrallah et al., 2020). FERPA limits access to personal data in student records. More recently the Gramm-Leach-Bliley Act (GLB Act) has extended to protect the financial and financial aid records of post-secondary students from cyber attacks ("Gramm-Leach-Bliley Act," n d.). Additional laws protecting student data vary state by state (Gallagher et al., 2017), meaning student data privacy and protections are negligible at the federal level. Without proper protections and regulations, students' rights may be violated without their knowledge.

The ethics of using digital tools in learning environments with adult students is thus explored, as well as how educators can engage with pedagogical theories that ensure their students' privacy and data rights. While FERPA protection extends to international students studying in the USA, the unique concerns regarding the data rights of adult English as a Second Language (ESL) learners and the reasons why this subset of students is especially vulnerable will also receive consideration.

Some privacy and digital rights issues for tertiary-level ESL or international students include:

- Who is responsible for explaining and ensuring the comprehension of FERPA protections and privacy and digital rights to international students who speak English as a second language (ESL)?
- Which factors should instructors of ESL students consider before adopting an EdTech tool for their classroom?
- What should adult ESL students be taught with regards to their rights in a U.S. context and what does such instruction look like?

For the purposes of this publication, ESL will refer to students who are studying the English language in a location where English is common and used by the majority of the population. While the term has gone out of fashion in the Teaching English to Speakers of Other Languages (TESOL) field, this acronym has been used here to differentiate between ESL and English as a Foreign Language (EFL), referring to language instruction that takes place in locations where English is not routinely used by most of the population. As the context herein is within higher education institutions in the USA, ESL has been used to indicate international students whose native language is anything other than a form of English comparable to American English. This includes both English language learners (ELLs) matriculating to post-secondary institutions in the USA from K-12 settings and full-time international students arriving on an F-1 visa to study at the tertiary level.

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