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AI Assets in Bankruptcy: Legal-Tech Fusion Expertise Is Needed for the Next Evolution of Restructurings

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Between 2023-25, venture capital funding for artificial-intelligence (AI) companies surged well into the billions.[2] This investment has produced two distinct categories of companies that could be vulnerable to bankruptcy: (1) those AI-washing (inflating AI capabilities to attract investment); and (2) businesses with operational dependencies on AI infrastructure, but perhaps without full ownership or control. While many responsible AI companies work tirelessly to advance technology, with more entrants to the market, more AI-involved bankruptcies are likely as new business models emerge in the era of advanced AI and decentralized frameworks — the fourth Internet evolution.[3]

When capital markets tighten and performance expectations sharpen, both company types face heightened restructuring risk. For bankruptcy practitioners, this convergence presents novel challenges. How do you value training datasets with contractual restrictions? What happens when a debtor's primary asset is access to a third-party model governed by anti-assignment clauses? Can a debtor-in-possession (DIP) monetize AI infrastructure built on licensing arrangements?

The Bankruptcy Code's drafters never envisioned assets like application programming interface (API) endpoints,[4] fine-tuned[5] parameters,[6] or annotated datasets[7] subject to copyright disputes. Yet as AI-linked companies experience distress, bankruptcy courts will apply existing laws to asset types that the Code did not anticipate.

This article examines the conflict between AI's economic surge and the Code. It analyzes how AI assets challenge traditional concepts of property and transferability, explores emerging issues around valuation and monetization, and considers whether the Code requires amending to address AI-specific restructurings. The analysis draws on early AI bankruptcy cases and evolving regulatory frameworks.[8]

Like the crypto bankruptcy cases,[9] AI restructurings cannot be addressed solely by bankruptcy expertise. Future AI restructurings will require legal/technical fusion: bankruptcy practitioners working alongside technology attorneys who can assess ownership, technical capabilities and real

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2   *See* "2024 Annual Global AI Report," PitchBook (reporting $67.3 billion in venture-capital investment in AI companies during 2023-24); HAI Stanford, "AI Index Report 2025: Economy," hai.stanford.edu/ai-index/2025-ai-index-report/economy (unless otherwise specified, all links in this article were last visited on Dec. 23, 2025).
3   Turgut Gürpinar," Towards Web 4.0: Frameworks for Autonomous AI Agents and Decentralized Enterprise Coordination," 12 Frontiers in Blockchain (2025), frontiersin.org/articles/10.3389/fbloc.2025.1591907/full.

4   An API is a defined set of rules that lets software systems communicate with each other. *See* "API," MDN Web Docs, developer.mozilla.org/en-US/docs/Glossary/API. APIs often include defined interface parameters that can be used to implement security controls, but security depends on proper design and configuration.
5   Fine-tuning is further adapting a pre-trained AI model on a smaller, task-specific dataset, so it becomes better specialized for a particular use case. *See* Alex Lowden, 'Fine-Tuning Techniques – Choosing Between SFT, DPO and RFT" Cookbook at OpenAI, cookbook.openai.com/examples/fine_tuning_direct_preference_optimization_guide.
6   A parameter is a learned numeric weight in a model that influences its outputs. *See* "What Are Model Parameters?," IBM, ibm.com/think/topics/model-parameters.
7   Dataset annotation is the process of adding labels or structured metadata to enable an AI model to learn patterns during training. *See* "What Is Data Labeling?," Google Cloud, cloud.google.com/use-cases/data-labeling?.
8   The Bankruptcy Code's application to new asset classes is not without precedent. Bankruptcy courts and practitioners recently addressed cryptocurrency, a digital asset class not envisioned by the Code's drafters.
9   *See* Clay Roberts, "The Crypto Bankruptcy Wave," *Bus. L. Today* (Feb. 21, 2023), americanbar.org/groups/business_law/resources/business-law-today/2023-march/the-crypto-bankruptcy-wave.

generative-AI infrastructure from AI-washing. Traditional bankruptcy due diligence — focused on finances, corporate structure and contracts — must expand to include technical assessments of model architectures, data provenance, API dependencies, infrastructure ownership and privacy/security. AI bankruptcies demand teams bridging the legal-tech canyon, where legal risk lurks if lawyers and technical experts lack a common translator. Moreover, clients increasingly might not pay the "technical translation tax" to bring legal advisors up to engineering speed in such matters.

Understanding AI Assets

AI systems include multiple interconnected assets that together create functional, data-driven tools. In bankruptcy, these AI-related assets might be valuable, but they raise complex questions about ownership, transferability and monetization.[10] AI assets include data-ingestion mechanisms that collect and prepare raw data; APIs that enable external interaction; and data-storage systems, such as data lakes/lakehouses,[11] that store structured and unstructured datasets. Data-processing pipelines transform raw information into usable formats for model training or inference. Labeling and annotation processes — performed by humans or bots — add context for model accuracy.[12] Model training and fine-tuning produce algorithmic assets,[13] including trained models,[14] model weights and intellectual property (IP).[15]

AI Asset Ownership and Fragmentation

AI-enabled product ownership takes many forms, and ownership structure will drive bankruptcy outcomes. The DIP often controls any fine-tuning or augmentation of an AI model and possesses the resulting model artifacts, while the underlying pre-trained system remains a licensed third-party closed model. ("Use Case #1"). In such cases, the DIP lacks unified AI ownership, but rather has limited contractual and IP rights subject to third-party contracts. This dynamic is complicated by co-development or joint-venture arrangements with unclear ownership allocations.

Alternatively, AI products rely primarily on third-party foundation models accessed through APIs or software-as-a-service platforms (*e.g.*, ChatGPT) ("Use Case #2").[16] Here, the DIP lacks possession or control of underlying models,

holding only a limited license to access AI capabilities operated by a third party. These architectures — and the resulting ownership fragmentation — could lead to materially different outcomes under the Bankruptcy Code.[17]

In Use Case #1, fragmentation becomes consequential at two levels: the training datasets and trained model artifacts. AI models are often trained on customer data, licensed datasets or open-source corpora[18] with use restrictions, such that the DIP might lack ownership or unrestricted rights in the training inputs. Separately, where the enterprise has invested heavily in refining or augmenting the model, use and transfer of model components may remain constrained by third-party IP and contractual rights to the model and training data.[19] Bankruptcy does not enlarge the DIP's property rights. Under 11 U.S.C. § 541(a), the estate succeeds to the DIP's actual ownership interests and permissible uses under applicable law and agreements.

In Use Case #2, the DIP's interest is more limited.[20] The DIP lacks the foundational model or associated IP and instead holds a contractual access right.[21] As a result, AI-enabled product value might be constrained by the scope of those access rights.

Section 365 of the Bankruptcy Code governs whether the estate may assume and assign executory contracts. In Use Case #1, the issue is whether the estate may assume and assign contractual rights to transfer or monetize the AI model. Where monetization requires assignment or expanded use of nonassignable data or model licenses, § 365(c)(1) may bar assumption without licensor consent, constraining value realization.[22]

Additional complexity arises where licensed training datasets were used to refine a licensed model. Transfer or commercialization might depend on whether assumption and assignment of data licenses is required.[23] Some data licenses restrict downstream commercial exploitation of materials developed using the data — an issue not yet directly addressed in the AI-training context.

Section 365 operates differently in Use Case #2, where AI capability consists primarily of access to a vendor-operated system. The DIP typically holds a limited-access license or service agreement, and monetization depends entirely on the DIP's ability to assume and assign that access arrangement.[24] If the access agreement restricts assignment or is nonassignable under applicable law, § 365(c)(1) might bar assumption or assignment without consent, leaving the DIP with limited transferable value.

10 *See generally* Andrej Karpathy, "Software 2.0," *Medium* (Nov. 11, 2017) (describing AI systems as combinations of data, models and infrastructure).

11 "Data warehouses" are structured repositories of data optimized for fast reporting and consistent metrics. "Data lakehouses" are a single platform combining ability to store raw/unstructured data with warehouse-like governance. *See* "Modern Analytics and Data Warehousing Architecture," AWS, docs.aws.amazon.com/whitepapers/latest/data-warehousing-on-aws/modern-analytics-and-data-warehousing-architecture.html.

12 *See* "Data Labeling: The Authoritative Guide," Scale AI, scale.com/guides/data-labeling-annotation-guide (describing industry practices for data annotation).

13 An "algorithmic asset" is a reusable algorithmic component such as a model, code, workflow, or decision rule. *See* James E. Malackowski, Eric Carnick & David Ngo, "AI as IP: A Framework for Boards, Executives, and Investors," J.S. Held, jsheld.com/insights/articles/ai-as-ip-a-framework-for-boards-executives-and-investors.

14 An "AI model" is a system that uses machine-learning to produce outputs from inputs. *See* "Artificial Intelligence Model," NIST CSRC Glossary, csrc.nist.gov/glossary/term/artificial_intelligence_model. Trained AI models are taught on training data to make predictions on new data. *See* "What Is Model Training?, IBM, ibm.com/think/topics/model-training.

15 *See* "Model Hub Documentation," Hugging Face, huggingface.co/docs/hub/en/model-release-checklist#upload-model-weights (describing model weights and training artifacts).

16 The authors deliberately do not contemplate a third use case in which the DIP is both the developer and provider of the AI model platform.

17 *See* 11 U.S.C. §§ 541(a)(1), 365; *Butner v. United States*, 440 U.S. 48, 55 (1979) (bankruptcy does not create property interests); *Mission Prod. Holdings Inc. v. Tempnology LLC*, 139 S. Ct. 1652, 1661-62 (2019).

18 "Open-source corpora" (AI) are openly licensed collections of language data (text/speech) usable for training/evaluating models. *See* Steven Bird, Ewan Klein & Edward Loper, "Accessing Text Corpora and Lexical Resources," www.nltk.org/book/ch02.html.

19 *See In re Golden Books Family Ent. Inc.*, 269 B.R. 300, 308-09 (Bankr. D. Del. 2001) (holding derivative works remain subject to upstream IP restrictions).

20 *Cf. Mission Prod. Holdings*, 139 S. Ct. at 1661-62 (recognizing self-executing IP use rights), *with In re Exide Techs.*, 607 F.3d 957, 964-65 (3d Cir. 2010) (distinguishing agreements requiring ongoing performance).

21 *See id.*

22 *See* 11 U.S.C. § 365(c)(1); *In re Catapult Ent. Inc.*, 165 F.3d 747, 750-55 (9th Cir. 1999) (holding nonexclusive IP licenses are nonassignable without consent).

23 *MDY Indus. LLC v. Blizzard Ent. Inc.*, 629 F.3d 928, 939-40 (9th Cir. 2010) (holding license scope defines authorized use).

24 *In re Exide Techs.*, 607 F.3d at 964-65 (distinguishing IP conveyance from access agreements).

Lessons from Builder.ai: AI-Washing in Bankruptcy

Few AI bankruptcies have occurred, but one case, Builder.ai, illustrates the challenges.[25] In this case, there were allegations of AI-washing, misrepresenting AI capabilities and claiming AI functionality where human labor predominates.[26] An August 2025 article questioned whether Builder.ai's purported AI was instead programmers manually completing tasks.[27]

The case underscores the need for rigorous technical due diligence. Bankruptcy counsel should engage technical attorneys and experts early to verify whether the purported AI is genuine, novel, owned and controlled, along with its value. Determining whether a company's "AI" consists of trained models or human labor requires expertise beyond traditional legal or financial diligence.

Bankruptcy practices will need to integrate technical legal expertise through co-counsel relationships, engagement of former AI or cybersecurity professionals, contracts with technical experts or some combination thereof. The days when bankruptcy counsel could rely solely on traditional advisors are ending. AI-touching restructurings need practitioners who understand chapter 11 and the technical architecture underlying AI assets.

Section 363 Sales and AI Asset Transferability

DIPs have recently used chapter 11 to sell assets under § 363 free and clear of liens, claims and encumbrances. A threshold requirement is that the assets are property of the estate under § 541(a).[28] AI-centric businesses may discover that they have little to sell, or that assets are worth substantially less than anticipated, producing valuation gaps and uncertain recoveries.

Financing Chapter 11 Cases with AI Assets

DIPs must address post-petition financing. DIPs often seek financing secured by substantially all assets. The threshold questions for AI-touching companies are whether the debtor owns the assets and whether a security interest can attach.[29] Where ownership is fragmented/uncertain, AI-centric DIPs might struggle to fund chapter 11 cases.[30]

Assuming and Rejecting AI-Related Contracts

Under the Bankruptcy Code, a DIP may assume favorable executory contracts and reject unfavorable ones, subject to rules governing IP licenses.[31] Courts generally hold that nonexclusive copyright licenses are personal and non-assignable,[32] patent licenses are typically nontransferable absent consent,[33] and trademark licenses generally cannot be assigned without licensor consent.[34]

Under § 365(n), a licensee DIP may elect to retain pre-petition IP rights, though courts differ on assumption standards. The Ninth Circuit's hypothetical test bars assumption where applicable law prohibits assignment without consent.[35] The First Circuit's actual test permits assumption if the nondebtor receives the benefit of its bargain, and the Southern District of New York has adopted a modified actual test that allows assumption but not assignment by a DIP, and does not allow assumption or assignment by a trustee.[36] Because AI-touching contracts vary, stakeholders must assess whether contracts can be assumed and assigned, directly impacting asset value and restructuring options.

Plan Confirmation and Valuation Challenges

Plan confirmation often hinges on asset valuation and compliance with the absolute-priority rule.[37] Uncertainty over AI asset ownership and value might require threshold determinations with input from financial advisors and technical legal experts. Where AI asset value is limited or uncertain, recoveries might be depressed.

Privacy, Security and Ombudsmen

AI bankruptcies might need an ombudsman or privacy officer where assets contain personally identifiable information (PII). This concern is acute in health care or large-employer cases involving AI systems trained on PII.[38]

Current Legislation and Future Needs

Existing laws[39] address AI transparency and consumer protection, but not bankruptcy-specific issues. From a restructuring perspective, the most significant open issues lie in IP law. On Dec. 11, 2025, President Donald J. Trump issued an Executive Order to establish a national AI standard, preempt certain state laws, respect copyrights and promote U.S. competitiveness.[40] It does not address bankruptcy or IP treatment of AI assets and will be contested.

25 *In re Builder.ai Global Inc.*, No. 25-10842 (Bankr. D. Del. filed June 15, 2025).

26 Bernard Marr, "Spotting AI Washing: How Companies Overhype Artificial Intelligence," *Forbes* (April 25, 2024), forbes.com/sites/bernardmarr/2024/04/25/spotting-ai-washing-how-companies-overhype-artificial-intelligence.

27 Cade Metz & Erin Griffith, "How Builder.ai Collapsed Amid Silicon Valley's Biggest Boom," *N.Y. Times* (Aug. 31, 2025), nytimes.com/2025/08/31/technology/builder-ai-collapse.html (subscription required to view article).

28 *See In re Groves*, 652 B.R. 104, 114 (Bankr. M.D. Fla. 2023) (holding that § 363 sales cannot transfer non-estate property).

29 *See* Unif. Com. Code Arts. 9, 12 (Am. L. Inst. & Unif. L. Comm'n 2022); *see also* Unif. Com. Code §§ 12-102(a), 12-105, 9-314A (addressing controllable electronic records and perfection by control).

30 *See* 11 U.S.C. § 364.

31 *See Matter of Thornhill Bros. Fitness LLC*, 85 F.4th 321, 324-25 (5th Cir. 2023); *Mission Prod. Holdings Inc. v. Tempnology LLC*, 587 U.S. 370, 372 (2019).

32 *In re Golden Books Family Entm't Inc.*, 269 B.R. 300, 311 (Bankr. D. Del. 2001).

33 *In re Access Beyond Techs. Inc.*, 237 B.R. 32, 46 (Bankr. D. Del. 1999).

34 *In re Trump Entm't Resorts Inc.*, 526 B.R. 116, 124 (Bankr. D. Del. 2015).

35 *In re Catapult Entm't Inc.*, 165 F.3d 747, 754-55 (9th Cir. 1999).

36 *Institut Pasteur v. Cambridge Biotech Corp.*, 104 F.3d 489, 493 (1st Cir. 1997); *In re Footstar Inc.*, 323 B.R. 566, 575 (Bankr. S.D.N.Y. 2005).

37 *See* 11 U.S.C. § 1129(b)(1).

38 *See* 11 U.S.C. § 332 (authorizing appointment of privacy ombudsman); *see also* Alicia McElhaney & Alexander Gladstone, "23andMe Is Bankrupt. Here's What You Need to Know About Your Genetic Data," *Wall St. J.* (March 25, 2025).

39 *See, e.g.*, Texas H.B. 149, 88th Leg., Reg. Sess. (Tex. 2025); N.Y.C. Local Law 144 of 2021 (regulating automated employment decision tools).

40 Exec. Order No. 14,179, "Eliminating State Law Obstruction of National Artificial Intelligence Policy," White House Press Release (Dec. 11, 2025), whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy.

The Future: AI as Asset and Arbiter

The AI sector is approaching an inflection point as valuations collide with economic realities. Many companies — particularly those engaged in AI-washing — have branded conventional software as AI without defensible models, proprietary data or infrastructure.[41] Any market correction may accelerate insolvencies, forcing scrutiny of AI asset ownership and value.

In future AI bankruptcies, key assets will include datasets, trained models, pipelines and licensing arrangements. These assets challenge valuation frameworks because value depends on data provenance, regulatory compliance, transferability and computing dependencies.

Simultaneously, AI is emerging as a valuation tool, capable of modeling enterprise value and creditor recoveries.[42] While promising, AI-generated valuations raise concerns regarding opacity, bias and overreliance on historical data.[43] Valuation in bankruptcy requires judgment and legal interpretation. Overreliance on algorithmic assessments risks embedding false precision into decisions with significant consequences.[44]

Conclusion

The next generation of restructurings will test the Bankruptcy Code and bankruptcy practice itself. AI-driven enterprises collapse traditional assumptions about asset ownership, transferability and valuation. Without integrated legal-technical expertise, practitioners risk chasing illusory value, underestimating contractual constraints and reducing recoveries. AI bankruptcies will inevitably pressure the Code, and it will fall on traditional bankruptcy professionals and technical experts to react in real time. **abi**

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41 *See* Marr, *supra* n.26.
42 *See* "How AI Is Transforming Business Valuation: Enhancing Accuracy and Efficiency," *Tribe AI* (March 20, 2025), tribe.ai/applied-ai/how-ai-is-transforming-business-valuation.
43 *See generally* Cynthia Rudin, "Stop Explaining Black Box Machine Learning Models," 2 Nat. Mach. Intel. 206 (2019).
44 *See* Frank Pasquale, *The Black Box Society: The Secret Algorithms that Control Money and Information* 19-57 (2015).