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AI Is Turning Corporate Archives Into Valuable Assets. What Could Go Wrong?

Lawyers could find themselves in unfamiliar territory as the need to train AI platforms spurs buying and selling corporate data in deals like Google's $10 million transaction with Spirit Airlines.

5 minute read | August 27, 2026 at 03:02 PM By Charles Toutant

Google Sign and Spirit Airlines airplane. Adobe Stock/Law.com

Google's $10 million deal to buy a vast quantity of data from the defunct Spirit Airlines is being seen as a harbinger of growing interest in the buying and selling of corporate records.

Google was the top bidder in a Chapter 7 bankruptcy auction of millions of emails and Microsoft Teams chats, employee records, spreadsheets and audits from Spirit, which ended operations in May.

Google said it will use the data to train its AI models.

And observers see AI generating a cottage industry in the monetization of business records—and not just in bankruptcy.

But the trend could bring new challenges for attorneys.

"When it comes to AI, we're always in the bottom of the first inning—there's always some new development," said Matthew Kohel, a partner at Saul Ewing in Baltimore who represents clients in commercial litigation, intellectual property and data privacy and advises companies developing and deploying AI. "Data has always had some value, but with the commercialization of generative AI systems and language learning models, it really has increased the need and value for data."

'Bumpy Ride' Ahead
The proposed Google-Spirit deal is awaiting court approval, while a labor union has raised objections, Kohel notes.

In addition, Google's plan to hire a third party to scrub identifiable information from personnel files and time sheets could face challenges, Kohel said.

And even if all identifying data is scrubbed from employee records, AI could re-identify individuals despite efforts to protect their anonymity, he said.

"It could be certainly a bumpy ride, because this is new territory, and may result in in lawsuits," Kohel said. "There is a lot of due diligence that you would have to do if you are acquiring this data to make sure you're not running into any issues."


Matt Kohel of Saul Ewing. Credit: Gittings Photography

Teams of Lawyers

Transactions involving employee communications could carry litigation risks because of the sensitive information they carry, like project management communication, access to financial information, access to proprietary databases, and even trade secrets, Kohel said.

Trade secrets are often thought of as the formula for Coca Cola, but they also entail information on workflow, logistics and business strategies, he said.

"That's why I think [Google] got way more value than the $10 million that they're going to pay to acquire this data," Kohel said.

Kohel expects that more companies come to realize their data has a value, and look to sell it or license it to AI companies for use in training.

Such deals could require a cross-functional team that includes intellectual property lawyers, data privacy lawyers and even employment lawyers who can provide counsel on topics like privacy aspects of the sale of employee emails, he said.

'They'll Deal With It'

Buying and selling corporations' data could also give rise to claims for trade secret misappropriation or unauthorized use of protected information when internal datasets contain proprietary or confidential information belonging to vendors, business partners or other third parties.

And this could create claims for trade secret misappropriation or unauthorized use of protected information.

The Google-Spirit deal is the first sale of a company's data in a bankruptcy that he's seen, but the growing awareness of the value of data is likely to lead to more deals involving still-solvent companies selling their records to companies like Amazon and Google that mine data, said Jeffrey Prol, a bankruptcy and restructuring partner at Lowenstein Sandler in Roseland, New Jersey.

Jeffrey D. Prol partner with Lowenstein Sandler. Courtesy photo

The potential that former Spirit employees' privacy will be violated by the sale of the company's records is "a huge problem," Prol said, but it's one that often arises in bankruptcy cases.

The bankruptcy code includes a provision providing for the appointment of a consumer ombudsman to make sure personal identifying information is not being disclosed, he said.

But while mechanisms are being put in place to scrub the data, but "the problem is that mechanisms always fail. There are always inadvertent disclosures," Prol said. He called that "a really important issue that's going to have to be addressed."

Part of the answer is that that disclosures of private data is part of cost of doing business, he said.

Prol likens the business risk to data breaches by hackers.

As data breaches have become commonplace, the businesses that are the targets typically resolve it by paying for a monitoring service for individuals who are impacted, Prol said.

"There hasn't been a heck of a lot of liability that I'm aware of that that these companies undertake" Prol said. Google is "going to have state of the art systems scrubbing the data, making sure that all the [personal protective information] is out. And to the extent that there there is a breach, they'll deal with it."