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## AI Assets in Bankruptcy: How Licensing Agreements Might Limit the Value of AI Models

Artificial intelligence (AI) is embedded in the technologies people interact with daily, from software that empowers smartphones to customer-facing chatbots and specialized research tools used across industries. AI has emerged as one of the fastest-growing sectors in the economy, driven by significant capital investment and a rapid proliferation of companies developing AI-driven technologies.<sup>1</sup> Yet while the AI sector commands substantial market value, the nature of the assets underlying that value — the intangible assets, such as algorithms, proprietary data, trained models and intellectual property — remains unclear and could create challenges in bankruptcy, particularly when identifying property of the estate and assessing whether such property can be transferred.<sup>2</sup>

AI companies derive value from integrated systems comprised of models, data and software, which are heavily constrained by third-party contractual rights.<sup>3</sup> Unlike traditional assets, these systems are susceptible to rights that are limited, licensed or otherwise constrained by third-party agreements.<sup>4</sup>

This creates challenges in bankruptcy, as these contract-dependent assets might not be easily transferred or valued under the Bankruptcy Code's standard framework for property of the estate. In particular, 11 U.S.C. §§ 101, *et seq.*, focuses on the ability to identify estate property, determine its value and, where appropriate, transfer the

debtor-in-possession (DIP) rights.<sup>5</sup> Sections 541 and 365 of the Bankruptcy Code reflect this framework by defining what constitutes property of the estate, and by permitting the assumption or assignment of executory contracts underlying the property.<sup>6</sup> These provisions operate with relative clarity when applied to traditional assets, but complexity arises when applied to AI models.

This article examines potential tensions between the Code's treatment of property as transferable assets and the reality that AI models derive their value from contract-constrained rights that might not transfer. It then considers the implications of these tensions for creditors in valuing and recovering against AI-related assets.

### The Value Behind AI Models

Traditional valuation methods struggle to capture the profit-making assets that AI companies have at their disposal.<sup>7</sup> Unlike a single machine or a patent, an AI model is a combination of integrated systems. At a high level, an AI model might consist of a trained model, datasets used to train or refine that model, software and infrastructure used to deploy it, and contractual rights governing access to and use of underlying data. While certain elements, such as source code or proprietary datasets, might be owned by a DIP, others are often accessed through licensing arrangements or service agreements that impose limitations on use, modification and transfer.<sup>8</sup> Otherwise, the DIP might acquire its training data set in ways that prompt copyright litigation.<sup>9</sup> The U.S. Bankruptcy Code relies on a clear distinction that is difficult to apply to these “bundles.”

Accordingly, the paramount issue is determining what rights a DIP holds with respect to each component of a particular AI model. This question becomes critical under the Bankruptcy Code, which draws a



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<sup>1</sup> See “AI Index Report 2025,” Stanford Inst. for Human-Centered Artificial Intelligence, 33-36 (2025), [hai.stanford.edu/ai-index/2025-ai-index-report](https://hai.stanford.edu/ai-index/2025-ai-index-report) (AI sector attracted \$33.9 billion in 2024, representing an 18.7 percent increase in 2023 and more than 8.5 times the investment of 2022; in turn, the number of AI startups jumped by 6.9 times between 2024 and 2019) (unless otherwise specified, all links in this article were last visited on April 23, 2026).

<sup>2</sup> See Paul Adams & Jason Strimpel, “Intangible Assets: The Input and the Output of the Artificial Intelligence Revolution — Part I,” Andersen Inst. for Fin. & Econ. 1, 3, 4 (2025), <https://anderseninstitute.org/wp-content/uploads/2026/03/AIBI-04-2026.pdf> (noting that 90 percent of the S&P 500 value is attributable to intangible assets, including data and software, which might be excluded from recognition on the balance sheet under current accounting rules).

<sup>3</sup> See James E. Malackowski & Eric T. Carnick, “Perspectives AI as IP: A Framework for Boards, Executives, and Investors,” J.S. Held 4 (2025), [jsheld.com/uploads/AI-as-IP-A-Framework-for-Boards-Executives-and-Investors\\_FINAL\\_DEC-3.pdf](https://www.jsheld.com/uploads/AI-as-IP-A-Framework-for-Boards-Executives-and-Investors_FINAL_DEC-3.pdf) (AI assets, such as datasets, model architectures and applications, are in high demand); see also Adams & Strimpel, *supra* at 13 (explaining that AI assets might be subject to licensing restrictions, third-party rights and other encumbrances that limited their use and transferability).

<sup>4</sup> Adams & Strimpel, *supra* at 13.

<sup>5</sup> See 11 U.S.C. §§ 541, 506, 365.

<sup>6</sup> See 11 U.S.C. §§ 541(a)(1), 363(b), 365(f).

<sup>7</sup> See Malackowski & Carnick, *supra* at 2 (current accounting principles often leave AI assets unrecognized, even if they are responsible for high valuations).

<sup>8</sup> See Adams & Strimpel, *supra* at 13.

<sup>9</sup> See Kevin Madigan, “AI Copyright Lawsuit Developments in 2025: A Year in Review,” Copyright Alliance (April 19, 2025), [copyrightalliance.org/ai-copyright-lawsuit-developments-2025](https://copyrightalliance.org/ai-copyright-lawsuit-developments-2025) (more than 70 infringement lawsuits by copyright owners have been filed against AI companies for unauthorized use of data to train AI-trained models).

line between property that becomes part of the estate under § 541 and contractual rights that are subject to assumption or assignment under § 365. A DIP might face significant constraints in realizing the value of an AI model that depends on rights that are contingent, limited or nontransferable.

Analyzing AI assets in bankruptcy requires a shift in perspective, viewing them as interdependent bundles rather than as discrete, transferable items. The following sections apply this framework to the Code's treatment of estate property and executory contracts, beginning with the scope of property of the estate under § 541.

## Section 541's Broad Definition of "Property of the Estate"

At the threshold, intangible assets comprising AI models might be considered property of the estate under the Bankruptcy Code. Section 541 defines the scope of the bankruptcy estate to include "all legal or equitable interests of the DIP in property as of the commencement of the case."<sup>10</sup> The provision is intentionally broad and encompasses both tangible and intangible property.<sup>11</sup>

However, labeling these assets as "estate property" is only the first step. The bankruptcy estate only inherits the rights (and limitations) the debtor had at the time of the petition filing.<sup>12</sup> This distinction is vital for AI models, where the DIP's interest in key inputs often stems from restricted contractual rights rather than full ownership. To train generative AI models, AI companies need mounds of data and might turn to two avenues to acquire it: (1) through third-party contractual relationships; or (2) by web-scraping and facing potential copyright disputes.

While some companies like Wikipedia and Walt Disney licensed their data directly, others join coalitions<sup>13</sup> such as the Shared AI License Foundation to share resources.<sup>14</sup> Otherwise, AI companies might find themselves mired in copyright litigation over the use of proprietary data to train their AI models.<sup>15</sup>

Consequently, while an AI company might own its proprietary code, other critical components (such as training datasets, third-party data feeds or cloud infrastructure) are often governed by servicing agreements that impose strict

restrictions on use, modification and transfer.<sup>16</sup> These arrangements might limit the DIP to nonexclusive, nontransferable or otherwise conditioned rights.

As a result, § 541 may technically pull an AI model into the estate, but the scope of that inclusion is tethered to the debtor's actual rights. The estate might encompass the model itself, but not unfettered rights to the data required to run it.<sup>17</sup> Likewise, the estate might include contractual rights to access certain datasets or services, but only to the extent permitted by the terms of those agreements.<sup>18</sup>

This creates a practical problem: The value of an AI model lies in the continued interaction between the model the data and the supporting tools. As such, where a DIP's rights to those inputs are limited, conditional or subject to termination, the estate's interest in the system might be correspondingly constrained. In this sense, inclusion of these assets into the estate does not necessarily equate to control over a fully functioning asset.

Accordingly, § 541 answers the threshold question of whether AI assets enter the estate, but it does not resolve whether the DIP could maintain and transfer contracts that sustain the AI model. To resolve that, we must turn to § 365.

## A DIP's Ability to Assume or Assign an AI License Agreement

Section 365 governs a debtor-in-possession's (DIP's) ability to transfer AI assets. However, as mentioned above, AI companies rely on data obtained from web-scraping, licensed datasets and internally generated inputs.<sup>19</sup>

Since AI models need datasets to train, they often rely on a network of agreements governing access to that training data, third-party datasets, application program interfaces and cloud-based infrastructure.<sup>20</sup> These agreements typically impose restrictions on use, modification and transfer, and might take the form of data licenses, service agreements or platform terms. As a result, the DIP's interest in these components is defined not by ownership, but by the scope of rights granted under contract.<sup>21</sup>

Section 365 permits a DIP to freely assume and assign executory contracts, notwithstanding certain anti-assignment provisions, subject to limitations imposed by applicable law.<sup>22</sup> Courts generally find that IP licenses are "executory" within the meaning of § 365, because each party to the license had the material duty of "refraining from suing

<sup>10</sup> 11 U.S.C. § 541(a)(1).

<sup>11</sup> See *Matter of Mills*, 41 B.R. 849, 850 (Bankr. W.D. Pa. 1984).

<sup>12</sup> *Mission Prod. Holdings Inc. v. Tempnology LLC*, 587 U.S. 370, 381 ("The estate cannot possess anything more than the debtor itself did outside bankruptcy.");

<sup>13</sup> See Kelvin Chan, "Wikipedia Inks AI Deals with Microsoft, Meta and Perplexity as It Marks 25th Birthday," Associated Press (Jan. 15, 2026), [apnews.com/article/wikipedia-internet-jimmy-wales-50e796d70152d79a2e0708846f84f6d7](https://apnews.com/article/wikipedia-internet-jimmy-wales-50e796d70152d79a2e0708846f84f6d7) (reporting that Wikipedia entered agreements with AI companies to license access to its data for use in training AI models); see also "The Walt Disney Company and OpenAI Reach Landmark Agreement to Bring Beloved Characters from Across Disney's Brands to Sora," OpenAI (Dec. 11, 2025), [openai.com/index/disney-sora-agreement](https://openai.com/index/disney-sora-agreement).

<sup>14</sup> See Deborah Sophia, "AI Pioneers Unite to Launch the Shared AI License Foundation to Advance Foundation Model Innovation," Shared AI License Found. (April 8, 2026), [finance.yahoo.com/sectors/technology/articles/ai-pioneers-unite-launch-shared-123000500.html](https://finance.yahoo.com/sectors/technology/articles/ai-pioneers-unite-launch-shared-123000500.html) (describing coalition of AI companies pooling IP and data-access rights through collaborative licensing framework); see also "Our Members," Shared AI License Found, [saifoundation.com/members](https://saifoundation.com/members).

<sup>15</sup> See *Thomson Reuters Enter. Ctr. GMBH v. Ross Intelligence Inc.*, 765 F. Supp. 3d 382, 401 (D. Del. 2025) (addressing claims that AI developer trained its system using copyrighted materials derived from Thomson Reuters' database); see also *In re Google Generative AI Copyright Litig.*, No. 23-cv-03440-EKL, 2026 WL 686314 (N.D. Cal. March 11, 2026) (highlighting disputes over whether AI models were trained on copyrighted data and whether developer had rights to use such data); see also Madigan, *supra*.

<sup>16</sup> See Adams & Strimpel, *supra* at 13.

<sup>17</sup> *Id.*

<sup>18</sup> See *Mission Prod. Holdings Inc.*, 587 U.S. at 381 ("The estate cannot possess anything more than the debtor itself did outside [of] bankruptcy.");

<sup>19</sup> See "Don't Get Sued Over Your AI Data: Legal Compliance for AI Companies," *Traverse Legal* (April 20, 2026), [traverselegal.com/blog/ai-data-ownership-legal-risks](https://traverselegal.com/blog/ai-data-ownership-legal-risks) (explaining that AI companies training models on proprietary data from third party are subject to licensing agreements); see also *In re Golden Books Family Ent. Inc.*, 269 B.R. 300, 308 (Bankr. D. Del. 2001) (finding that IP licenses might constitute executory contracts subject to § 365).

<sup>20</sup> See Amanda J. (A.J.) Zottola & Channing D. Gatewood, "Key Considerations for Drafting and Negotiating Data Licensing Agreements," *Venable LLP* (April 20, 2026), [venable.com/insights/publications/ip-quick-bytes/key-considerations-for-drafting-and-negotiating](https://venable.com/insights/publications/ip-quick-bytes/key-considerations-for-drafting-and-negotiating) (explaining that data-licensing agreements grant access to data subject to defined restrictions on use, duration and transfer).

<sup>21</sup> *Id.*

<sup>22</sup> 11 U.S.C. § 365(c).

the other from infringement of any of the [IP] covered by the license.”<sup>23</sup> Courts have generally found that a nonexclusive license — one where the licensee has only a personal and not a property interest in the IP — cannot be assigned unless the IP owner authorizes the assignment.<sup>24</sup>

This limitation has significant consequences for AI-related assets. As previously discussed, the functionality of an AI model depends on continued access to data and supporting tools. Where the DIP cannot assign the agreements governing those inputs, a purchaser might be unable to operate the system as intended. In such circumstances, the DIP might be able to transfer discrete components of the system — such as model weights or source code — without transferring the rights necessary to use, retrain or commercialize the model.<sup>25</sup>

Ultimately, § 365 acts as a practical ceiling on the value of AI assets in bankruptcy. Even where such assets are included in the estate under § 541, their value depends on the DIP’s ability to maintain and transfer the contractual relationships that sustain them. If those relationships are nonassignable, subject to consent or otherwise restricted, the asset might be materially impaired or rendered commercially unusable.

In this way, § 365 functions not merely as a procedural mechanism for dealing with executory contracts, but as a gatekeeper of value. It determines whether AI-related assets can be transferred as integrated systems or reduced to fragmented components. For AI-driven enterprises, where value is embedded in the interaction between data, models and access rights, this distinction might significantly affect the asset’s value.

## Implications for Creditors

AI-related assets present unique challenges for credi-

tors seeking to value or recover against the bankruptcy estate. Unlike traditional property, the value of those assets is entirely contingent on whether the DIP can continue to use them or transfer them with the rights necessary to preserve their functions. Because an AI model’s utility relies on a delicate synergy among data, infrastructure and underlying licenses or agreements, any disruption to those rights could effectively break the model’s functionality.

Accordingly, creditors must evaluate not just the existence of AI models or codes as property, but the scope of rights that the DIP holds. Where those rights are constrained by licensing terms or uncertainty surrounding copyright litigation, the value of the collateral might be materially diminished. What appears as a whole asset might consist of components that cannot be used together as intended.

This landscape requires a more contract-focused diligence approach. Creditors should assess the transferability of data licenses and related agreements, or risk overvaluing assets whose value might not survive bankruptcy.

## Conclusion

AI-related assets present unique paradox in bankruptcy: The factors that drive their value outside of bankruptcy might not fully transfer when those assets are evaluated within the bankruptcy process. While §§ 541 and 365 provide a framework capable of accommodating these assets, the outcome of any restructuring or organization depends on a precise technical understanding of the contractual rights attached to those assets.

For AI companies, value is not found in a single line of code or a standalone database, but in the seamless interactions among trained models, datasets and the rights that govern them. If those rights are incomplete, restricted or nontransferable, the bankruptcy estate might ultimately inherit only a diminished, fragmented version of what appears to be a valuable asset. As the AI sector continues to grow, the ability to dissect and assess the transferability of these asset bundles will become a critical skill for legal and financial practitioners navigating the next wave of industrial distress. **abi**

<sup>23</sup> See *In re Golden Books Family Ent. Inc.*, 269 B.R. 300, 308 (Bankr. D. Del. 2001).

<sup>24</sup> *Id.* at 308-09 (citing *In re Patient Educ. Medica Inc.*, 210 B.R. 237, 243 (Bankr. S.D.N.Y. 1997)).

<sup>25</sup> See *Mission Prod. Holdings Inc.*, 587 U.S. at 381.