

Data Sale In Spirit Bankruptcy Raises Novel Privacy Risks

By **Daniel Lowenthal and Kimberly Black** (October 13, 2026)

In August 2025, Spirit Airlines filed its second bankruptcy less than a year after its first. Although the company tried to find a way to keep the lights on, in May 2026, Spirit Airlines pivoted toward liquidation in the U.S. Bankruptcy Court for the Southern District of New York.

Though asset sales are routine practice in large Chapter 11 cases like Spirit Airlines, in this case, the debtors' proposed sale of assets has raised novel data privacy questions that the law may not be ready to answer.

This summer, Spirit Airlines began marketing its remaining assets including the following: takeoff and landing slots at LaGuardia airport, aircraft hangars, corporate headquarters, a training center, multifamily residential buildings, ground service equipment, spare engines, flight simulators, aircraft maintenance equipment, and assets related to the debtors' loyalty program.

Spirit Airlines also began marketing its "other intangible assets and/or other assets that the Debtors and their advisors shall identify and make available for diligence in the Data Room." At first blush, this vague category may not appear particularly interesting, and it may be hard to imagine what assets fall into this miscellaneous bucket that have more than de minimis value.

But artificial intelligence companies see value in unusual places.

Because AI models learn from analyzing vast amounts of data, companies looking to train their AI models seek access to comprehensive data sets. AI companies looking to gain a competitive edge need to feed their AI models private, unique data that is not available to rival AI companies. Now, data that was essentially valueless several years ago, such as email and chatroom data, can be incredibly important.

As a result, Spirit Airlines may be able to realize millions of dollars in value for these previously inconsequential assets. But the proposed sale raises important data privacy concerns.

On Aug. 14, Spirit Airlines announced that Google had won a competitive auction for the former airline's productivity and collaboration data, core business systems and business applications data, and workflow and process data with a bid of \$10 million.[1]

The data specifically includes years' worth of emails, chatroom messages, calendar invites, spreadsheets and presentations as well as data related to employee behavior and productivity, revenue and yield management, aircraft operations and logistics, project management, and corporate finance.

Google's intention with this proposed purchase is clear — a spokesperson for Google announced that the data would be valuable for improving AI models. And Google isn't the only company that sees value here.



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Spirit Airlines announced that the backup bidder is an AI company, Mercor, which bid \$7.5 million. Furthermore, on Sept. 3, micro1 Inc., a corporation operating a human-data and intelligence platform for AI training, filed a public notice on the docket announcing its intention to bid \$12.5 million in cash for the assets.

The filing came after the auction was closed and after Google was announced as the winning bidder. However, micro1 asked the debtors to waive the deadlines set forth in the bid procedures so that its superior bid could be considered.

Bankruptcy courts are certainly accustomed to approving asset sales where data privacy is a concern. For example, in June 2025, the U.S. Bankruptcy Court for the Eastern District of Missouri approved TTAM Research Institute's purchase of the assets of 23andMe, a company known for providing at-home genetic testing kits. The biometric data included in that sale was more sensitive than any of the data included in Spirit Airlines' proposed sale to Google.

In 23andMe, the proposed sale received objections from over 30 states and the District of Columbia. These objectors argued that the sale violated various state privacy statutes and that the debtors should seek new, opt-in consents from the millions of customers whose data was included in the sale. This proposal was echoed in a report filed by the consumer privacy ombudsman appointed to assist the court in its consideration of facts, circumstances and conditions related to 23andMe's proposed sale.

Despite noting that the proposed sale of genetic data "is a scary proposition," the court also found that "an absolute prohibition on sales could result in missed opportunities." [2] The court approved the sale and declined to require that customers submit new, opt-in consents. An appeal of this decision by the state of California was dismissed on Sept. 29.

The court's reasoning relied on various facts, including that: (1) TTAM Research is run by 23andMe's co-founder who also ran the debtor for years; (2) the lucrative sale would provide all the debtors' creditors with a recovery, including customers who had some of the largest claims against the estate, and (3) TTAM Research promised to improve its own privacy practices.

As noted above, the data that Spirit Airlines proposes to sell is not highly sensitive like the data sold by 23andMe. But, unlike in 23andMe, the purchaser of Spirit's data does not intend to use the data the same way the debtor had and will not have the same relationship with the customers or employees as the debtor.

Furthermore, in 23andMe, the main creditors were customers who had claims against the estates. Thus, while customer data would be sold, customers would also directly benefit from that sale. Even though the sale of Spirit's data will also benefit creditors, the largest creditors in Spirit Airlines' bankruptcy are not consumers or employees whose data is being sold.

In Spirit Airlines, as in 23andMe, the court entered an order directing the U.S. Trustee Office to appoint a consumer privacy ombudsman.

On Sept. 8, the consumer privacy ombudsman filed a report regarding Spirit Airlines' proposed data sale, and, on Oct. 5, the consumer privacy ombudsman filed a supplemental report.

The initial report noted that the debtors intended to deidentify any consumer data included in the sale. Deidentification is the process of stripping any information, such as birth dates

or home addresses, that can be tracked back to a specific person.

Notably, Section 363(b) of the Bankruptcy Code, which is the provision under which a consumer privacy ombudsman is appointed, only limits the sale of personally identifiable information. If deidentification means that no personally identifiable data will be sold, then Section 363(b)'s restrictions do not apply.

Indeed, the consumer privacy ombudsman's first report concluded that deidentification makes the sale permissible under both Spirit Airlines' privacy policy and the law. However, the report also warned that the "technology has far outpaced the law."^[3]

The report stated that AI has become so advanced that it may be able to combine the deidentified data with data from other sources and make various inferences about individuals to eventually reidentify the data sold, which would put consumers at risk.

Ultimately, the consumer privacy ombudsman recommended various guardrails that would prevent reidentification and/or limit the harms caused if reidentification occurred. These guardrails were related to verification of deidentification, transparency, protection of minors, restrictions on reidentification and security in the AI training environment.

Google's preliminary response to the consumer privacy ombudsman's first report argued that none of the data being sold is personally identifiable data because of the deidentification. Nevertheless, the response states that Google has already agreed to exclude from the sale all databases that disproportionately contain consumer data to reduce any risks posed to consumer privacy.

Google's response did not indicate whether Google would adopt the other guardrails proposed by the consumer privacy ombudsman. However, the consumer privacy ombudsman's supplemental report disclosed that, in addition to narrowing the data sold, Google also hired a deidentification agent to deidentify the data and certify deidentification through a publicly filed document.

As a result, the consumer privacy ombudsman's supplemental report found that the potential risks to consumer had been significantly reduced. The supplemental report concluded that approval of the sale would be appropriate from a privacy perspective.

However, neither Google's response nor the two consumer privacy ombudsman reports address additional privacy concerns raised by employees.

The law is also silent on how employees should be treated in this scenario because Section 363(b)(1) only puts restraints on a debtor's sale of "personally identifiable information about individuals to persons that are not affiliated with the debtor." Since employees are affiliated with the debtor, this provision does not cover the treatment of employee data.

Nevertheless, the Air Line Pilots Association filed limited objections to the proposed sale, citing concerns about employees' personal information being sold.^[4] For example, employees' personal information would likely be included in decades' worth of Spirit Airlines' payroll, timekeeping, training, travel, disciplinary and recruitment files included in the proposed sale.

These objections note that while consumer data will be deidentified, no such protections apply to confidential employee data. In fact, one objection notes that "it is almost certain that individual pilots and others will be identifiable from the data."^[5]

Notably, although the employee objections suggest that deidentification of employee data would be appropriate, the risk of reidentification articulated by the consumer privacy ombudsman's first report could apply to employee information without additional guardrails.

Meanwhile, micro1's bid notice does explicitly respond to the privacy concerns raised by the labor groups. In its competing bid, micro1 proposes to exclude sensitive employment content. The bid also includes the imposition of various restrictions and prohibitions on the use of the data, including a prohibition on reidentification.

In sum, although the data that Spirit Airlines intends to sell is certainly less sensitive than data sold in other bankruptcy cases, the broad scope of that data and the proposed use of that data raises novel concerns that the law does not address.

In addition, while the Spirit Airlines case directly implicates AI, theoretically AI could be used to reidentify any data sold in any bankruptcy without proper guardrails. This issue will only become increasingly acute as AI continues to develop. Therefore, courts may have to consider imposing guardrails around AI use and data deidentification in more and more cases.

Spirit Airlines' sale hearing was initially scheduled for Sept. 9, but the hearing has been adjourned several times. The new hearing date is Oct. 14. How this bankruptcy court will grapple with the concerns raised about the proposed sale of Spirit Airlines' data remains to be seen.

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[1] ECF No. 1463, p. 16.

[2] *In re 23andMe Holding Co.*, 674 B.R. 487, 526 (Bankr. E.D. Mo. 2025). An appeal of this decision by the State of California was recently dismissed. See *California v. 23andMe Holding Co.*, No. 4:25-CV-00999-CMS, 2026 WL 2921080 (E.D. Mo. Sept. 29, 2026).

[3] ECF No. 1581, p. 3.

[4] Certain contract counterparties also filed objections seeking to protect their proprietary commercial information, technical data, and financial information stored in the debtors' computer and data storage systems. As this information is not personally identifiable information, those objections are substantially different from the objections filed by the labor groups.

[5] ECF No. 1558, p. 3.