

The Commercialization of OpenAI: A Parable Showing the Need for Regulation in the Wild West of Artificial Intelligence Development

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I. The Parable of OpenAI's Commercialization and the Need for an AI Industry Rulebook

OpenAI, in its non-profit form, found that it could not compete with tech giants like Meta and Google due to both the immense capital required to develop Artificial Intelligence (AI) and the intense competition for well-paid AI researchers.¹ This led OpenAI's leadership to transform the company into a capped "for-profit" institution in 2019.² Shortly thereafter, OpenAI partnered with Microsoft, receiving \$1 billion and granting Microsoft the right to commercialize OpenAI's solutions.³

Since the decision to become a for-profit corporation and to partner with Microsoft, tensions grew among OpenAI's decisionmakers regarding the company's future.⁴ To what extent would the company chase profits at the expense of its original humanitarian goal?⁵ Such tensions led to the ouster of Sam Altman, who had been instrumental in the Microsoft partnership, among other commercialization efforts, from his position as the company's CEO in November of 2023.⁶

Two days before the Board fired Altman, several of OpenAI's researchers wrote OpenAI's Board of Directors a letter regarding a powerful artificial intelligence discovery that could threaten humanity.⁷ A month earlier, OpenAI Board member Helen Toner, a researcher at Georgetown University, helped publish a paper alleging that OpenAI had frantically cut corners in its release of ChatGPT.⁸ Toner even posited that "the destruction of the company could be consistent with the board's mission" of creating a positive human impact through its development of AI.⁹

However, immediately after Altman's firing, OpenAI employees publicly called for his reinstatement.¹⁰ An estimated 97% of OpenAI employees signed a letter demanding the Board of

¹ Greg Brockman, et al., *OpenAI LP*, OPENAI (Mar. 11, 2019), <https://openai.com/blog/openai-lp#OpenAI> [<https://perma.cc/76DS-X8JS>].

² Jeremy Kahn, *AI Research Group Co-Founded by Elon Musk Starts For-Profit Arm*, BLOOMBERG (Mar. 11, 2019), <https://www.bloomberg.com/news/articles/2019-03-11/ai-research-group-co-founded-by-musk-starts-for-profit-arm?embedded-checkout=true> [<https://perma.cc/ZS92-CE9R>].

³ Greg Brockman, *Microsoft invests in and partners with OpenAI to support us building beneficial AGI*, OPENAI (Jul. 22, 2019), <https://openai.com/blog/microsoft-invests-in-and-partners-with-openai> [<https://perma.cc/TD4L-NVJ4>].

⁴ Tripp Mickle et al., *Inside OpenAI's Crisis Over the Future of Artificial Intelligence*, N.Y. TIMES (Dec. 9, 2023), <https://www.nytimes.com/2023/12/09/technology/openai-altman-inside-crisis.html?login=ml&auth=login-ml&login=email&auth=login-email> [<https://perma.cc/7LH5-79MK>].

⁵ *Id.*

⁶ *Id.*

⁷ Anna Tong et al., *OpenAI researchers warned board of AI breakthrough ahead of CEO ouster, sources say*, REUTERS (Nov. 23, 2023), <https://www.reuters.com/technology/sam-altmans-ouster-openai-was-precipitated-by-letter-board-about-ai-breakthrough-2023-11-22/> [<https://perma.cc/FKH8-GW2S>].

⁸ Mickle, *supra* note 4.

⁹ *Id.*

¹⁰ *Id.*

Directors to reinstate Altman as CEO.¹¹ Many employees threatened to leave the company if the Board of Directors did not resign.¹² While exiled from his position at OpenAI, Sam Altman openly discussed developing a new venture directly under Microsoft’s umbrella, and OpenAI employees publicly and privately threatened to jump ship and follow Altman if the Board would not reinstate him.¹³

OpenAI welcomed Sam Altman back after five days, coinciding with the exodus of Board Members who ordered his exile.¹⁴ Margaret Mitchell, the chief ethics scientist at Hugging Face, an open-source A.I. platform, explained that OpenAI’s “board was literally doing its job when it fired Sam. [Altman’s] return will have a chilling effect. We’re going to see a lot less of people speaking out within their companies, because they’ll think they’ll get fired—and the people at the top will be even more unaccountable.”¹⁵

II. Conclusion

Even the most well-intentioned non-profit group of tech leaders, flush with cash and resolved to develop AI for the benefit of humanity quickly succumbed to market pressures to stay in the AI game. OpenAI became a for-profit institution and, out of its need for capital, partnered with Microsoft, one of the largest businesses in the world, and gave them exclusive privileges in exchange for investment. By one of OpenAI’s own former board member’s admission, the business has frantically cut corners to stay ahead of the competition.¹⁶

All of this shows what any student of history already knows. The rapid development of an immensely profitable industry leads to intense competition and a rapacious approach among industry leaders. The free market system rewards these dangerous behaviors, as they allow for quicker innovation and marketability. But this approach comes at the cost of safety and care for our society’s wellbeing, which can create lasting and pervasive societal harms if left unchecked.

A system of regulation that will create clearer guidelines throughout the AI industry will bring much needed guardrails to what has thus far been a lawless frontier. When the stakes could involve civilization’s collapse, such regulations must be implemented wisely and swiftly to avoid serious societal detriment.

¹¹ Dara Kerr, *OpenAI reinstates Sam Altman as its chief executive*, NPR (Nov. 22, 2023), <https://www.npr.org/2023/11/22/1214621010/openai-reinstates-sam-altman-as-its-chief-executive>, [https://perma.cc/S6G4-FWGF].

¹² Akash Sriram, *OpenAI staff threaten to quit unless board resigns – letter*, REUTERS (Nov. 20, 2023), <https://www.reuters.com/technology/openai-staff-threaten-quit-unless-board-resigns-letter-2023-11-20/> [https://perma.cc/VNQ2-VZWP].

¹³ Rohan Goswami, *Hundreds of OpenAI employees threaten to follow Altman to Microsoft unless board resigns*, CNBC (Nov. 21, 2023), <https://www.cnbc.com/2023/11/20/hundreds-of-openai-employees-threaten-to-follow-altman-to-microsoft-unless-board-resigns-reports-say.html> [https://perma.cc/AL4L-EPMM].

¹⁴ Charles Duhigg, *The Inside Story of Microsoft’s Partnership with OpenAI*, THE NEW YORKER (Dec. 1, 2023), <https://www.newyorker.com/magazine/2023/12/11/the-inside-story-of-microsofts-partnership-with-openai> [https://perma.cc/NE2R-9N4P].

¹⁵ *Id.*

¹⁶ Mickle, *supra* note 4.