

Elon Musk's OpenAI Lawsuit: How it Further Demonstrates the Need for Regulation of the Blooming AI Industry

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Over the past couple of months, I published a two-part essay explaining the history of OpenAI and how its transition from a non-profit venture to an aggressively capitalistic for-profit corporation partnered with Microsoft demonstrates the need for regulation of the AI industry. The central thesis was that this history shows that even well-intentioned efforts to develop AI for the benefit of humanity will succumb to capitalistic corner-cutting because, in lieu of regulations, such a venture cannot survive without becoming another capitalistic and competitive business posing the possibility to do serious harm.

Then, late in the day on February 29th, co-founder of OpenAI Elon Musk filed a complaint against OpenAI and his fellow cofounders CEO Sam Altman and President Greg Brockman in California Superior Court.¹

I. Musk's Side of the Story

His complaint alleges that the defendants have “set [OpenAI's] Founding Agreement aflame,” as OpenAI no longer seeks “to ensure that [AI] ‘benefits all of humanity’” but instead “has transformed into a closed-source de facto subsidiary of the largest technology company in the world: Microsoft.”² Musk is seeking injunctive relief – specifically, he is requesting that the court compel OpenAI to “return to its mission to develop [AI] for the benefit of humanity” rather than enrich OpenAI and Microsoft.³

Musk's lawsuit is unlikely to succeed, legally speaking.⁴ But, it could accomplish other goals. Georgetown University Law Professor Anupam Chander opined that Musk might want to share his view of the company and his personal history with it.⁵ Some think that Musk initiated this suit to expose confidential information about AI's algorithms behind GPT-4 by means of discovery.⁶ This is plausible, as Musk's complaint alleges GPT-4 is dangerous because it can reason through problems better than humans and its code and design are entirely secretive.⁷ Musk argues that OpenAI is keeping GPT-4's design secretive for commercial rather than safety reasons.⁸

¹ Jahnvi Nidumolu, Aditya Soni & Sheila Dang, *Elon Musk sues OpenAI for abandoning original mission for profit*, REUTERS (Mar. 1, 2024), <https://www.reuters.com/legal/elon-musk-sues-openai-ceo-sam-altman-breach-contract-2024-03-01/>.

² Complaint, Musk v. Altman, No. CGC-24-612746, Super. Ct. Cal., S.F. County (filed Feb. 29, 2024).

³ *Id.*

⁴ Kelvin Chan, Thalia Beaty & Matt O'Brien, *Elon Musk sues OpenAI and CEO Sam Altman, claiming betrayal of its goal to benefit humanity*, A.P. (Mar. 1, 2024), <https://apnews.com/article/microsoft-sam-altman-openai-chatgpt-425186c7640aa3d0956e99314a9240e2>.

⁵ *Id.*

⁶ Hayden Field & Lora Kolodny, *Musk's OpenAI lawsuit is 'good advertisement for the benefit of Elon Musk' but may have little legal merit*, CNBC (Mar. 5, 2024), <https://www.cnbc.com/2024/03/05/read-the-complaint-in-elon-musk-v-sam-altman-greg-brockman-openai.html>.

⁷ Complaint, Musk v. Altman, No. CGC-24-612746, Super. Ct. Cal., S.F. County (filed Feb. 29, 2024).

⁸ *Id.*

II. OpenAI’s Side of the Story

Unsurprisingly, Altman, Brockman, and OpenAI are moving to dismiss Musk’s claim.⁹ Perhaps more surprisingly, in a blog post published on Tuesday, March 5th, they disclosed a series of emails and conduct that make Musk look incredibly hypocritical - stating that he suggested the OpenAI Board of Directors should merge OpenAI with Tesla, to become Tesla’s “cash cow,” and that he withheld funding from the entity to try and get the Board to give him majority equity, board control, and the position of CEO when the company became a for-profit corporation.¹⁰

Upon leaving OpenAI in 2018, Musk reportedly pledged to create his own AI venture and expressed doubt regarding OpenAI’s ability to raise the capital necessary to compete with other AI developers like Google.¹¹ Perhaps most damning is an email in which Musk assented to keeping the science behind OpenAI’s AI developments entirely secret and proprietary.¹²

In the same blog post, OpenAI’s current leadership restated their commitment to “ensure [AI] benefits all of humanity” and that, at the time they chose to become a for-profit entity, it was because they “understood [they] were going to need a lot more capital to succeed at [their] mission.”¹³

Thus, the OpenAI leadership responded to Musk’s claims that they were irresponsibly and aggressively developing AI to seek profits by arguing that he wanted the venture to do the same to enrich himself. But, also, that they are only seeking profits to maintain their operations to ultimately benefit humanity.

One might be skeptical of this, but my central takeaway remains the same – that OpenAI, as a non-profit entity capable of developing AI for the good of society, was simply not feasible in the long term due to the intense market pressures of the industry. Between raising the necessary capital to keep the venture’s projects intact and creating the incentives necessary to hire engineers capable of doing the work, it was not feasible for OpenAI to remain a non-profit.

III. Conclusion

With proper governmental regulations a project that benevolently develops AI would be much more feasible simply because the profitability and the pace of all of these AI developments would cool. Even smaller, reasonable restraints like requiring moratoriums on new AI systems and mandating disclosures of new technologies would allow for more responsible development of this all-important technology. Such measures would deter AI innovation from moving so quickly that we cannot prevent their potentially massive negative externalities. Also, it would likely allow smaller competitors to get into the AI business, rather than concentrating all of these massive gains into the hands of a few of the world’s largest companies.

How society develops this technology is essential – once we further develop AI, its impacts will likely be eternal and reach nearly everything. Regulating such an industry, once it touches all facets of society, will be much more difficult than carefully containing its growth via

⁹ Greg Brockman, et al., *OpenAI and Elon Musk*, OPENAI (Mar. 5, 2024), <https://openai.com/blog/openai-elon-musk>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

laws requiring transparency and moderation. We would be wise to take the latter approach as soon as possible – and not leave it to (arguably) well-intentioned tech moguls.