

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

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## I. Part One: The Current State of AI Regulation, Briefly

OpenAI's extreme transformation from a non-profit entity to a for-profit company, and the recent removal and reinstatement of Chief Executive Officer Sam Altman, demonstrate the impracticality of self-regulation and need for a federal system of regulation in the aggressively innovative and fiercely competitive artificial intelligence (AI) industry.

AI has great potential to both benefit humanity and existentially threaten it. As a society, we must determine whether and how to regulate this constantly developing industry to foster its benefits and negate its detriments. OpenAI's founders recognized this and founded OpenAI as a non-profit to develop AI for the benefit of humanity, not for profit in 2019.<sup>1</sup> Since then, along with other leaders of tech giants,<sup>2</sup> Open AI's Chief Executive Officer Sam Altman has staunchly argued in favor of government regulation of AI due to the immense and potentially damaging impact it could make on society.<sup>3</sup>

Lawmakers made inroads and overtures toward implementing such regulations in 2023. Several states passed laws regulating AI's use in various contexts in 2023.<sup>4</sup> However, there is currently no federal system for regulation of AI.<sup>5</sup> President Joe Biden took first steps toward this by issuing an Executive Order calling for several federal agencies to develop information of the scope of AI's impacts in different areas of society, the best ways to leverage the benefits of AI, and recommendations regarding preventing abuses and negative effects of AI's integration into society.<sup>6</sup>

Still, some argue that the AI industry should self-regulate with limited government involvement.<sup>7</sup> Proponents of this approach argue that government regulation of the industry is untenable because of officials' lack of expertise regarding AI, the government's inability to react to and regulate the technology's rapid development, and the high costs of implementing a system of regulation over AI solutions and the industry writ large.<sup>8</sup> The story of OpenAI's rapid

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<sup>1</sup> *Tech giants pledge \$1bn for 'altruistic AI' venture, OpenAI*, BBC (Dec. 12, 2015), <https://www.bbc.com/news/technology-35082344>, <https://perma.cc/9569-WTQM>.

<sup>2</sup> Sawdah Bhaimiya, *Google's CEO Sundar Pichai says AI is 'too important not to regulate well' amid growing safety concerns*, BUSINESS INSIDER (May 23, 2023), <https://www.businessinsider.com/google-ceo-sundar-pichai-ai-too-important-regulate-well-2023-5>, <https://perma.cc/Y9XW-73DD>.

<sup>3</sup> Cecilia Kang, *OpenAI's Sam Altman Urges AI Regulation in Senate Hearing*, N.Y. TIMES (May 16, 2023), <https://www.nytimes.com/2023/05/16/technology/openai-altman-artificial-intelligence-regulation.html>, <https://perma.cc/M6HY-HTDB>.

<sup>4</sup> Katrina Zhu & EPIC IPIOP Clerk, *The State of State AI Laws: 2023*, ELEC. PRIVACY INFO. CTR. (Aug 3, 2023), <https://epic.org/the-state-of-state-ai-laws-2023/>, <https://perma.cc/3MAD-X75J>.

<sup>5</sup> Cristiano Lima & Cat Zakrzewski, *Biden signs AI executive order, the most expansive regulatory attempt yet*, WASH. POST (Oct. 30, 2023), <https://www.washingtonpost.com/technology/2023/10/30/biden-artificial-intelligence-executive-order/>, <https://perma.cc/ZU8D-DN6R>.

<sup>6</sup> Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023).

<sup>7</sup> Adonis Hoffman, *Why self-regulation is best for artificial intelligence*, THE HILL (Nov. 8, 2023), <https://thehill.com/opinion/4300288-why-self-regulation-is-best-for-artificial-intelligence/>, <https://perma.cc/T59J-UC2K>.

<sup>8</sup> *Id.*

transformation from a non-profit to a profit-seeking corporation and the factors that caused it serve as a parable showing that self-regulation is not a feasible solution in the AI industry.