

BALANCING MISSION AND MARKET: OPENAI'S STRUGGLE WITH PROFIT VS. PURPOSE

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ABSTRACT

This article examines OpenAI's unique organizational structure, which juxtaposes its non-profit mission with for-profit business practices, and the legal and ethical implications arising from this hybrid model. Initially established under Section 501(c)(3) of the Internal Revenue Code to advance artificial general intelligence (AGI) for the collective benefit of humanity, OpenAI has increasingly integrated commercial interests, leading to the creation of a for-profit subsidiary, OpenAI LP. This evolution has sparked scrutiny regarding the alignment of OpenAI's activities with its original charitable objectives.

The article is structured in three parts. Part I outlines the legal framework governing 501(c)(3) organizations, emphasizing the conditions under which they may establish for-profit subsidiaries while maintaining tax-exempt status. Part II explores the shifts in OpenAI's mission statements, the consolidation of CEO Sam Altman's influence, and the deepening relationship with Microsoft, which

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has invested heavily in OpenAI and gained significant strategic influence. This section also addresses the controversies surrounding increased secrecy in OpenAI's operations, particularly concerning AGI safety and ethical considerations. Part III discusses the potential ramifications of OpenAI losing its non-profit status, including the legal requirements for distributing its charitable assets and the precedent set by the conversion of charitable healthcare organizations into for-profit entities. Part IV explores future implications and recommendations, proposing innovative governance structures, tailored regulatory approaches, and global frameworks for overseeing AGI development.

By analyzing OpenAI's trajectory, this article contributes to the broader discourse on the governance of non-profit entities engaged in high-stakes technological development. It underscores the importance of balancing innovation with ethical responsibilities, ensuring that the pursuit of AGI does not compromise the foundational mission of benefiting humanity. The article concludes by emphasizing the need for comprehensive legal, ethical, and governance frameworks to address the unique challenges posed by organizations operating at the intersection of cutting-edge AI technology and public benefit.

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INTRODUCTION

Within the non-profit sector, entities organized under Section 501(c)(3) of the Internal Revenue Code play an important role. These organizations are characterized by their exclusive dedication to charitable, educational, scientific, or literary endeavors, and they play a crucial role in advancing public welfare while eschewing private profit motives.¹ At the heart of their operational principles is the rule against distributing surplus revenues, meaning that any extra income shall be funneled back into the organization's primary mission instead of being paid out as profit or dividends.² But as the sector evolves, it precipitates a reevaluation of these foundational principles' applicability and boundaries.

OpenAI Inc. ("OpenAI") serves as a compelling case study in this evolution. Initially founded with the altruistic goal of leveraging artificial general intelligence ("AGI") to enhance humanity's collective well-being, OpenAI has increasingly intersected its mission with for-profit business practices.³ This intersection has drawn scrutiny and raised questions about its adherence to the traditional non-profit model.⁴ The creation of OpenAI LP (the "For-profit OpenAI"), a for-profit subsidiary, highlights the complex relationships between OpenAI's charitable goals and commercial interests, leading to a variety of legal and financial complications.⁵

This article will proceed in three parts. Part I provides an overview of the legal framework governing non-profit organizations under Section 501(c)(3) of the Internal Revenue Code, highlighting the key requirements for maintaining tax-exempt status and the permissibility of establishing for-profit subsidiaries. Part I lays the foundation for understanding the legal landscape within which OpenAI operates and the potential pitfalls it must navigate as a hybrid entity.

¹ 26 U.S.C. § 501(c)(3) (2024); *see also* Internal Revenue Serv., Publication 1990 EO CPE, C. Overview of Inurement / Private Benefit Issues in IRC 501(c)(3).

² 26 U.S.C. § 501(c)(3) (2024); INTERNAL REVENUE SERV., *supra* note 1.

³ *See, e.g.*, Ellen P. Aprill, Rose C. Loui & Jill R. Horwitz, *Board Control of a Charity's Subsidiaries: The Saga of OpenAI*, 182 TAX NOTES FED. 289 (2024), <https://ssrn.com/abstract=4720202> [<https://perma.cc/L82F-9Z33>]; Complaint, Musk v. OpenAI, No. CGC-24-612746 (Cal. Super. Feb. 2, 2024); Justin Hendrix, *Questioning OpenAI's Nonprofit Status*, TECH POL'Y PRESS (Jan. 14, 2024), <https://techpolicy.press/questioning-openais-nonprofit-status> [<https://perma.cc/83FW-YELE>].

⁴ Hendrix, *supra* note 3.

⁵ Aprill, Loui & Horwitz, *supra* note 3; Complaint, *supra* note 3; Hendrix, *supra* note 3.

Part II delves into OpenAI's evolving missions and corporate structures, tracing the modifications made to its mission statements over time and the implications of these changes on its non-profit status. It also examines the reconfiguration of OpenAI's board of directors, which has seen CEO Sam Altman consolidate significant influence within the company and across Silicon Valley, potentially overshadowing the board's role in ensuring adherence to the organization's charitable objectives. Furthermore, this section explores OpenAI's deepening relationship with Microsoft, exemplified by substantial investments, exclusive licensing agreements, and the granting of an observer role on OpenAI's board, raising questions about the autonomy and mission fidelity of the non-profit entity.

Finally, Part III considers the potential consequences of OpenAI losing its non-profit status, either voluntarily or involuntarily. It discusses the legal requirements for distributing charitable assets in the event of dissolution and draws comparisons to the precedent set by the conversion of charitable healthcare organizations into for-profit entities. This section highlights the challenges of valuing OpenAI's assets, particularly its rights to future profits and technology from its for-profit subsidiary, and emphasizes the importance of allocating funds to foundations focused on promoting ethics and safety in AI development.

Through this examination of OpenAI's unique organizational framework, financial arrangements, and emerging controversies, the article aims to contribute to the ongoing discourse surrounding the governance of non-profit entities engaged in high-stakes technological development. As OpenAI navigates the blurred lines between its charitable mission and commercial interests, it is crucial to ensure that the pursuit of innovation does not come at the expense of responsible AI development for the benefit of humanity.

I. LEGAL FRAMEWORK

A. *Overview of IRC Section 501(c)(3)*

Section 501(c)(3) of the Internal Revenue Code provides tax exemption for organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.⁶⁷⁸ The statute expressly states:

⁶ 26 U.S.C. § 501(c)(3) (2024).

⁷ *Id.*

⁸ *Id.*

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.⁹

The Supreme Court, in *Better Business Bureau of Washington, D.C., Inc. v. United States* (1945), examined the precise requirements for achieving and maintaining tax-exempt status.¹⁰ In *Better Business Bureau* (“BBB”), the Supreme Court evaluated whether the BBB qualified for tax-exempt status under provisions analogous to Section 501(c)(3) of the Internal Revenue Code.¹¹ The BBB claimed it was organized and operated exclusively for educational purposes, one of the exempt purposes under the statute.¹² However, the Court ruled that the BBB’s primary activities extended beyond purely educational purposes.¹³ While the BBB did provide consumer education and promoted ethical business practices, the Court found that these activities were substantially tied to promoting the profitability and interests of its business members.¹⁴ The Court emphasized that even if an organization engages in some exempt activities, it must ensure that these activities are the organization’s exclusive focus.¹⁵ Substantial non-exempt activities, such as advancing private business interests, disqualify an organization from 501(c)(3) status.¹⁶

The BBB case demonstrates several key principles for maintaining 501(c)(3) tax-exempt status. Organizations must operate solely for exempt purposes like education or charity, with no substantial activities furthering private interests. Day-to-day operations must align with these charitable purposes—even incidental

⁹ *Id.*

¹⁰ See *Better Bus. Bureau of Washington, D.C., v. United States*, 326 U.S. 279 (1945).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

commercial activities can jeopardize tax-exempt status if they become substantial. No private individuals or entities should receive direct or indirect benefits from the organization's activities, as shown in the BBB case where promoting business members' interests disqualified them from tax-exempt status. Activities substantially furthering non-exempt purposes, like advancing private commercial interests, will result in loss of tax exemption even if some exempt activities occur. The Supreme Court emphasized that organizations must maintain exclusive focus on their charitable mission and carefully avoid substantial engagement in activities serving private interests over public benefit.

In summary, to qualify as a 501(c)(3) organization, an entity must exist for one or more exclusively charitable purposes, must not serve any private interests, and its earnings must be used for charitable purposes only.¹⁷ Furthermore, all of the entity's assets will be permanently dedicated to its charitable purpose.¹⁸ In the event that a 501(c)(3) organization ceases its operations, all of its remaining assets (after debts are paid) must be distributed for a charitable purpose.¹⁹ In addition, if a 501(c)(3) organization has changed its mission over time, it must inform the IRS of the change to keep its 501(c)(3) status.²⁰ Entities that may seek 501(c)(3) qualification include corporations, trusts, community chests, and unincorporated associations.²¹ Under very limited circumstances, a limited liability company may also seek 501(c)(3) status.²²

B. 501(C)(3) Organizations Are Allowed to Have For-profit Subsidiaries

Having taxable for-profit subsidiaries is not a new phenomenon for 501(c) organizations.²³ For example, hospitals, universities, and research institutions, often establish for-profit subsidiaries to perform services or engage in commercial activities that are related to their exempt purposes.²⁴ By creating a for-profit subsidiary, a nonprofit organization can access additional capital from

¹⁷ *What is a 501(c)(3)? A Guide to Nonprofit Tax-Exempt Status*, FOUND. GRP.®, <https://www.501c3.org/what-is-a-501c3/> (last visited June 17, 2024) [<https://perma.cc/Y6J6-VLVR>].

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Internal Revenue Serv., Publication 1986 EO CPE, E. For-Profit Subsidiaries of Tax-Exempt Organizations.

²⁴ *Id.*

investors who are motivated by receiving a return on their investment.²⁵ This expands the organization's financial resources beyond contributions, loans, and earned revenue.²⁶ In addition, a for-profit subsidiary can offer equity compensation and profit-sharing opportunities to employees, which is not possible for a nonprofit organization.²⁷ This flexibility in compensation can help attract talented individuals, especially when competing with for-profit employers.²⁸ This practice of having for-profit subsidiaries is gaining popularity, especially in the science sector, as the pace of discovery continues to dramatically increase. Eligible organizations are interested in using this structure to access capital and attract employees.²⁹

On the other hand, in order to maintain its exempt status, the 501(c)(3) organization must ensure that its activities are primarily to further its exempt purposes.³⁰ If a significant portion of the activities serve non-exempt purposes (e.g. commercial purposes), it may jeopardize the tax-exempt status.³¹ The IRS and courts often look into whether the activities are incidental to accomplishing the exempt purpose or if they are an end in themselves.³² This analysis helps determine the primary purpose of the activities.³³ This is particularly relevant when evaluating non-profit organizations with complex activities, such as OpenAI.

²⁵ David A. Levitt & Steven R. Chiodini, *Taking Care of Business: Use of a For-Profit Subsidiary by a Nonprofit Organization*, AM. BAR ASS'N: BUS. L. TODAY (June 22, 2014), https://www.americanbar.org/groups/business_law/resources/business-law-today/2014-june/taking-care-of-business-use-of-a-for-profit-subsiary/ [https://perma.cc/2WDU-WT3Y].

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Treas. Reg. § 1.501(c)(3)–(d)(1)(ii); see also *Better Bus. Bureau v. United States*, 326 U.S. 279, 286 (1945).

³¹ See Treas. Reg. § 1.501; see also *Better Bus. Bureau*, 326 U.S. at 283–84.

³² See INTERNAL REVENUE SERV., EXEMPT ORGANIZATIONS TECHNICAL GUIDE TG 3-3: EXEMPT PURPOSES–CHARITABLE IRC SECTION 501(C)(3) (2014), <https://www.irs.gov/pub/irs-pdf/p5781.pdf> [https://perma.cc/5CXN-E6Z9].

³³ *Id.*

II. OPENAI'S MISSIONS AND CORPORATE STRUCTURES

A. *Mission Changes Unaccounted*

OpenAI was founded on December 8, 2015 as a non-profit organization with a mission focused on ensuring that artificial intelligence benefits all of humanity.³⁴ It aimed to lead in AGI development, focusing on leveraging AI to address global challenges and making sure its benefits were widely available.³⁵ This mission was reflected in its founding document, with OpenAI's December 8, 2015 Certificate of Incorporation explicitly stating that the "resulting technology will benefit the public and the corporation will seek to open-source technology for the public benefit when applicable."³⁶ Similarly, on its very first Form 990, filed for the fiscal year ending in December 2016, OpenAI stated that its mission is:

"to advance digital intelligence in the way that is most likely to benefit humanity as a whole, unconstrained by a need to generate financial return. We think that artificial intelligence technology will help shape the 21st century, and we want to help the world build safe AI technology and ensure that AI's benefits are as widely and evenly distributed as possible. We're trying to build AI as part of a larger community, and we want to openly share our plans and capabilities along the way."³⁷

Both the certificate and the initial Form 990 emphasize that OpenAI was not established for personal gain and highlight the organization's strong commitment to AI safety and altruistic objectives. The initial Form 990 also stated that OpenAI would "openly share our plans and capabilities along the way."³⁸

OpenAI reiterated this mission on its Form 990 for the fiscal year ending in December 2017.³⁹ Interestingly, in its filing for the fiscal year ending in

³⁴ *Our Structure*, OPENAI (last visited June 17, 2024), <https://openai.com/our-structure/> [<https://perma.cc/SNM9-C28Q>].

³⁵ *Id.*

³⁶ See Complaint, *supra* note 3, at 13.

³⁷ *Full Text of Full Filing for Fiscal Year Ending Dec. 2016*, PROPUBLICA: OPENAI INC. (last visited Sept. 14, 2020), <https://projects.propublica.org/nonprofits/organizations/810861541/201703459349300445/full> [<https://perma.cc/6YNU-YNK5>].

³⁸ *Id.*

³⁹ *Full Text of Full Filing for Fiscal Year Ending Dec. 2017*, PROPUBLICA: OPENAI

December 2018, OpenAI took out the last sentence about sharing capacity and stated that its mission is:

“to advance digital intelligence in the way that is most likely to benefit humanity as a whole, unconstrained by a need to generate financial return. We think that artificial intelligence technology will help shape the 21st century, and we want to help the world build safe AI technology and ensure that AI’s benefits are as widely and evenly distributed as possible. ~~We’re trying to build AI as part of a larger community, and we want to openly share our plans and capabilities along the way.~~”⁴⁰ (strikes added).

For the fiscal year ending in December 2021, OpenAI modified this statement again, stating that its mission is:

“to build general-purpose artificial intelligence that benefits humanity, unconstrained by a need to generate financial return. OpenAI believes that artificial intelligence technology has the potential to have a profound, positive impact on the world, so the company’s goal is to develop and responsibly deploy safe AI technology, ensuring that its benefits are as widely and evenly distributed as possible.”⁴¹

This version seems to contain no material changes to the company’s purpose when compared to the 2018 version.

Generally, a 501(c)(3) organization is permitted to change its mission and purpose so long as these changes are consistent with its 501(c)(3) status and are properly disclosed in the organization’s Form 990.⁴² Such changes do not require

INC. (last visited Sept. 14, 2020), <https://projects.propublica.org/nonprofits/organizations/810861541/201920719349300822/full> [https://perma.cc/N3X5-MHHU].

⁴⁰ *Full Text of Full Filing for Fiscal Year Ending Dec. 2018*, PROPUBLICA: OPENAI INC. (last visited Sept. 14, 2020), <https://projects.propublica.org/nonprofits/organizations/810861541/201943199349318399/full> [https://perma.cc/53Z9-FU3K].

⁴¹ *Full Text of Full Filing for Fiscal Year Ending Dec. 2021*, PROPUBLICA: OPENAI INC. (last visited Sep. 14, 2020), <https://projects.propublica.org/nonprofits/organizations/810861541/202243199349314989/full> [https://perma.cc/4WJP-SE3X].

⁴² Benjamin Takis, *Can a Nonprofit Change its Mission Without IRS Approval?*, SUSTAINABILITY EDUC. 4 NONPROFITS (Feb. 14, 2023),

advance IRS approval, but significant changes in mission, purpose, and programs can affect an organization's ability to rely on the IRS determination letter approving 501(c)(3) status.⁴³ In other words, "the IRS is not required to honor an organization's 501(c)(3) approval letter if these changes are material and inconsistent with 501(c)(3) status."⁴⁴ The 2018 deletion is not a minimal modification to OpenAI's original mission statement, and OpenAI did not provide any explanation for it in the schedules attached to the Form 990. These issues pose a potential problem for OpenAI.

B. CEO Altman's Influence Overshadows Board

OpenAI's board has gone through several dramatic changes. Initially, OpenAI relied on over \$1 billion in pledged donations, with actual donations totaling approximately \$130.5 million by 2019.⁴⁵ These funds were aimed at supporting its operations and early research in deep learning, safety, and alignment.⁴⁶ It was founded by leaders from the AI research community and experts with commitment to the organization's non-profit aims.⁴⁷ OpenAI's founders and initial board of directors included Sam Altman, Elon Musk, machine learning expert Ilya Sutskever, former Stripe CTO Greg Brockman, and research engineers and scientists Trevor Blackwell, Vicki Cheung, Andrej Karpathy, Durk Kingma, John Schulman, Pamela Vagata, and Wojciech Zaremba.⁴⁸ This early board was tasked with setting the strategic direction of the organization and ensuring that its activities remained true to its stated mission of

<https://www.se4nonprofits.com/blog/qa-150-can-a-nonprofit-change-its-mission-without-irs-approval> [<https://perma.cc/QMB2-9A7U>].

⁴³ *Id.*; see also Treas. Reg. § 601.201(n)(3)(ii); Treas. Reg. § 1.501(a); IRS Rev. Proc. 2023-5, Section 11.

⁴⁴ Takis, *supra* note 42.

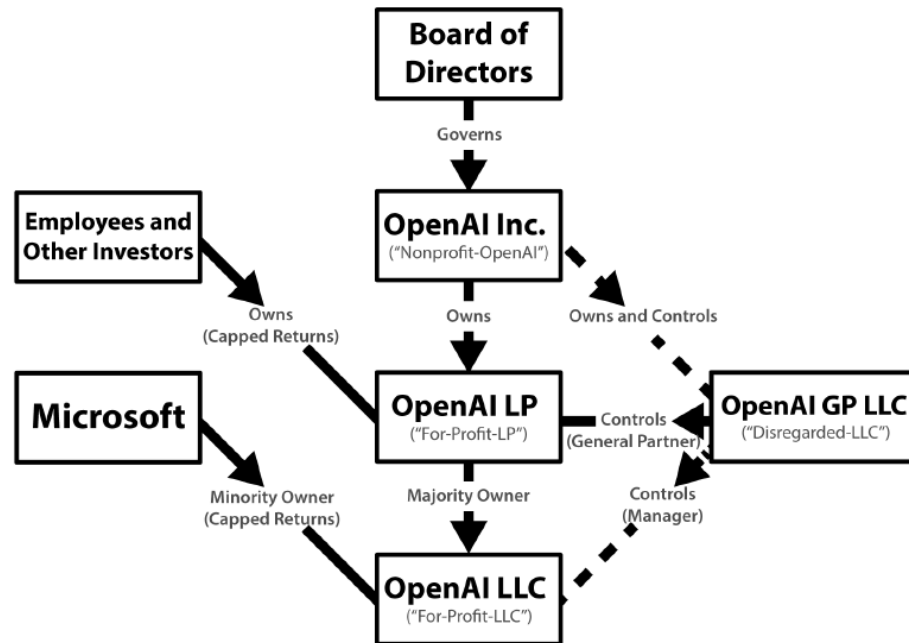
⁴⁵ See Matt Levine, *OpenAI Isn't Open Enough for Elon*, BLOOMBERG (Mar. 1, 2024), <https://www.bloomberg.com/opinion/articles/2024-03-01/openai-isn-t-open-enough-for-elon> [<https://perma.cc/4BF8-DRZY>]; see also Complaint, *supra* note 3, at 25.

⁴⁶ *Id.*

⁴⁷ Greg Brockman & Ilya Sutskever, *Introducing OpenAI*, OPENAI (Dec. 11, 2015), <https://openai.com/blog/introducing-openai> [<https://perma.cc/GR2U-E6P8>]; see also *OpenAI, the Company Behind ChatGPT: What All It Does, How It Started and More*, THE TIMES OF INDIA (Jan. 25, 2023), <https://timesofindia.indiatimes.com/gadgets-news/openai-the-company-behind-chatgpt-what-all-it-does-how-it-started-and-more/articleshow/97297027.cms> [<https://perma.cc/X44J-TQJP>].

⁴⁸ *Id.*

promoting and developing open and accessible AI technologies.⁴⁹ Recognizing the limitations of donations to meet the escalating costs of computational power and talent, OpenAI devised a new structure in 2019, illustrated as follows:⁵⁰



This structure introduced a for-profit subsidiary, OpenAI LP, to raise capital and attract talent, while maintaining the non-profit parent's governance and mission focus.⁵¹ The for-profit subsidiary was created with returns for investors capped at 100x their investment, and the company expects this multiple to be lower for future rounds.⁵² This is aimed to ensure that OpenAI's primary fiduciary obligations remain aligned with its non-profit mission to develop safe and broadly beneficial AI.⁵³ At the same time, the non-profit's board oversees all activities and is tasked to ensure alignment with the mission of developing safe and beneficial AGI.⁵⁴ The board was comprised of independent directors who are selected for their commitment to the organization's goals and their

⁴⁹ *Id.*; see also Complaint, *supra* note 3 at 7.

⁵⁰ Aprill, Chan Loui & Horwitz, *supra* note 3 at 290.

⁵¹ *Id.* at n.4.

⁵² Greg Brockman & Ilya Sutskever, *OpenAI LP*, OPENAI (Mar. 11, 2019), <https://openai.com/index/openai-lp/> [<https://perma.cc/DB45-UU6M>].

⁵³ Aprill, Chan Loui & Horwitz, *supra* note 3 at 289.

⁵⁴ *Id.* at 290.

ability to navigate the complexities of managing a hybrid non-profit/for-profit entity.⁵⁵ The board’s responsibilities include monitoring for conflicts of interest, ethical decision-making, and maintaining operational transparency.⁵⁶

However, as OpenAI was witnessing dramatic progress with its development of AI technology, the board became concerned with their “increasing inability to supervise the CEO, including determining whether Altman was advancing the nonprofit purpose.”⁵⁷ The New York Times reported that “some board members worried that Mr. Altman was too focused on expansion while they wanted to balance that growth with A.I. safety.”⁵⁸ Eventually, the board made the decision to fire Sam Altman in November 2023 (the “November 2023 Developments”). The following is a chronological account of the November 2023 Developments.⁵⁹

Date	Event Description
November 16, 2023	Ilya Sutskever scheduled a call with Sam Altman for the following day, hinting at crucial forthcoming discussions.
November 17, 2023	Greg Brockman was demoted but retained as President; CEO Sam Altman was publicly announced as fired.
	Several senior OpenAI researchers resigned in protest following the announcement.
November 18, 2023	An internal memo indicated no malfeasance involved in Altman’s firing; described as a communication breakdown.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 293.

⁵⁸ Cade Metz, Tripp Mickle & Mike Isaac, *Before Altman’s Ouster, OpenAI’s Board Was Divided and Feuding*, N.Y. TIMES (Nov. 21, 2023), <https://www.nytimes.com/2023/11/21/technology/openai-altman-board-fight.html> [<https://perma.cc/KS6C-B788>].

⁵⁹ Kyle Wiggers, *A Timeline of Sam Altman’s Firing from OpenAI -- and the Fallout*, TECHCRUNCH (Jan. 5, 2024), <https://techcrunch.com/2024/01/05/a-timeline-of-sam-altmans-firing-from-openai-and-the-fallout/> [<https://perma.cc/4CL5-3KTH>]; see also Will Knight, *95 Percent of OpenAI Employees Threaten to Follow Sam Altman Out the Door*, WIRED (Nov. 28, 2023), <https://www.wired.com/story/95-percent-of-openai-employees-threaten-to-follow-sam-altman-out-the-door/> [<https://perma.cc/T5SG-9AEH>].

November 19, 2023	Discussions reported about potential reinstatement of Altman; Microsoft showed support for his return.
November 20, 2023	738 OpenAI employees (approximately 95% of all employees) threatened to resign unless the board was restructured to reinstate Altman.
	Altman and Brockman announced joining Microsoft to lead a new AI research team.
November 21, 2023	OpenAI reached an agreement in principle for Altman's return as CEO. The new "initial" board included notable figures.
November 29, 2023	Microsoft was granted a non-voting observer role on OpenAI's board.
January 5, 2024	Bloomberg revealed Dee Templeton from Microsoft as the non-voting board observer attending meetings.

The board explained in an announcement that "Mr. Altman's departure follows a deliberative review process by the board, which concluded that he was not consistently candid in his communications with the board, hindering its ability to exercise its responsibilities."⁶⁰ The announcement also stated that the board "no longer has confidence in his ability to continue leading OpenAI."⁶¹ However, in just a few days, Altman was reinstated as CEO of OpenAI, while majority of the original board members resigned and a new board formed.⁶²

Helen Toner, one of the original board members at the time, stated that the board's actions were not driven by an intent to impede OpenAI's progress.⁶³ Nevertheless, a significant conflict had reportedly emerged related to a report she authored, which raised concerns about the accelerated development of AI.⁶⁴ Specifically, the report noted that the launch of ChatGPT had pressured competitors to hasten their own developments, potentially at the expense of

⁶⁰ *OpenAI Announces Leadership Transition*, OPENAI (Nov. 17, 2023), <https://openai.com/index/openai-announces-leadership-transition/> [<https://perma.cc/FW6V-H8A6>].

⁶¹ *Id.*

⁶² Aprill, Chan Loui & Horwitz, *supra* note 3 at 289, 293, 294; see also Cade Metz, Mike Isaac, Tripp Mickle, Karen Weise & Kevin Roose, Sam Altman Is Reinstated as OpenAI's Chief Executive, N.Y. TIMES (Nov. 22, 2023), <https://www.nytimes.com/2023/11/22/technology/openai-sam-altman-returns.html> [<https://perma.cc/M2ZM-KKSU>].

⁶³ Aprill, Chan Loui & Horwitz, *supra* note 3 at 293.

⁶⁴ *Id.*

safety and ethical considerations.⁶⁵ If this interpretation of the conflict is accurate, it would suggest that the board members were conscientiously performing their fiduciary duties by evaluating whether Altman's leadership was effectively furthering the company's legal objectives.⁶⁶ However, it appears that those board members who resigned after these events did not share this view.⁶⁷ Despite their correct assessment of Altman, he seemed to consolidate significant influence within the company and across Silicon Valley, positioning him as the primary authority and overshadowing the board's role.⁶⁸

The new OpenAI board comprises a diverse group of individuals with significant backgrounds in technology, business, and public service, including Adam D'Angelo, Bret Taylor, Dr. Sue Desmond-Hellmann, Fidji Simo, Larry Summers, Nicole Seligman, and Sam Altman.⁶⁹ Adam D'Angelo served as co-founder and CEO of Quora and previously held the position of CTO at Facebook, where he contributed to the company's early technological advancements.⁷⁰ Bret Taylor began his career at Google where he played a key role in the development of Google Maps and later co-founded FriendFeed, which was acquired by Facebook. Taylor has since held prominent positions in the tech industry, including co-CEO of Salesforce and Chairman of Twitter.⁷¹

Dr. Sue Desmond-Hellmann brings extensive experience from her six-year tenure as CEO of the Bill and Melinda Gates Foundation, where she led various global health initiatives.⁷² Fidji Simo served as Vice President of the Facebook App prior to her current roles as the CEO and Chair of Instacart and a board member at Shopify.⁷³ Larry Summers brings a wealth of economic expertise to

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Sam Altman Returns as CEO, OpenAI Has a New Initial Board*, OPENAI (Nov. 29, 2023), <https://openai.com/blog/sam-altman-returns-as-ceo-openai-has-a-new-initial-board> [<https://perma.cc/TG5R-S8LA>]; *see also OpenAI Announces New Members to Board of Directors*, OPENAI (Mar. 8, 2024), <https://openai.com/blog/openai-announces-new-members-to-board-of-directors> [<https://perma.cc/9MJ9-ZWX4>].

⁷⁰ Aprill, Chan Loui & Horwitz, *supra* note 3 at 294.

⁷¹ *Id.*

⁷² *See OpenAI Announces New Members to Board of Directors*, *supra* note 69; *see also* Sue Desmond-Hellmann, LINKEDIN, <https://www.linkedin.com/in/suedesmondhellmann/> [<https://perma.cc/4L29-B9Q4>] (last visited Nov. 10, 2024).

⁷³ *OpenAI Announces New Members to Board of Directors*, *supra* note 69.

the board having served as the U.S. Secretary of the Treasury and as President of Harvard University.⁷⁴

Nicole Seligman, with her extensive experience in corporate governance, currently serves on the boards of Paramount Global, MeiraGTx Holdings PLC, and Intuitive Machines, Inc. She has also held the position of President of Sony Entertainment, Inc., and Sony Corporation of America. Earlier in her career, she worked as an attorney, representing high-profile clients such as President William Jefferson Clinton and Hillary Clinton.⁷⁵

Given the diverse expertise and backgrounds of its members, it remains uncertain whether this newly formed board will be motivated or capable of fully pursuing OpenAI's charitable objectives, particularly in light of the organization's evolving focus and the complex challenges it faces.⁷⁶

C. Microsoft's Investment and Observer Role

On the other hand, Microsoft has been making massive investment into OpenAI. Microsoft initially made a \$1 billion investment in 2019 and expanded it with a further \$10 billion in 2023.⁷⁷ As part of this extended partnership, Microsoft has pledged to escalate its investments in specialized supercomputing systems.⁷⁸ This will include funding the construction of specialized supercomputing systems to speed up OpenAI's research, and Microsoft's Azure cloud platform will be the sole cloud service provider for all OpenAI projects.⁷⁹ On September 22, 2020, OpenAI entered into an agreement with Microsoft, exclusively licensing its Generative Pre-Trained Transformer (GPT)-3 language model to Microsoft.⁸⁰ This licensing agreement allowed Microsoft to integrate OpenAI's technology into its services while OpenAI retained the rights to its advancements in AGI, which were deemed outside the scope.⁸¹

However, the dynamics of this relationship took a more complex turn with the development of GPT-4. OpenAI's release of GPT-4 marked a significant departure from its original mission, as the model's internal design and capabilities were kept secret, and the technology became proprietary.⁸² It was

⁷⁴ Aprill, Chan Loui & Horwitz, *supra* note 3 at 294.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Complaint, *supra* note 3, at 23.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 7.

⁸¹ *Id.*

⁸² *Id.*

alleged that GPT-4's development, while utilizing contributions from OpenAI's founders intended for public benefit, resulted in a product that was effectively a Microsoft proprietary algorithm, integrated into Microsoft's software suite.⁸³ This move was seen as primarily driven by commercial considerations.⁸⁴

The 2023 developments further complicate the relationship between OpenAI and Microsoft. OpenAI's board underwent a drastic change in November 2023, where a majority of its members, including the Chief Scientist Ilya Sutskever, were forced to resign, and new board members were instated. And although Microsoft does not directly hold board seats in OpenAI's board, Microsoft gained a non-voting observer role on OpenAI's board in the November 2023 developments. This role, which does not include voting rights, signifies Microsoft's ongoing commitment and influence in OpenAI's strategic direction.⁸⁵ As the chart on the November Developments pointed out, Dee Templeton from Microsoft now serves as the non-voting board observer role on OpenAI's board and is already attending board meetings.⁸⁶ There are also allegations that new board seats were hand-picked to align with Microsoft's interests.⁸⁷ These changes have been viewed as creating a de facto subsidiary relationship between OpenAI and Microsoft, prioritizing commercial gains over the founding mission of benefiting humanity.⁸⁸ Furthermore, Microsoft's CEO was reported to have remarked on the company's comprehensive control and capability within OpenAI, underscoring the deep integration and influence Microsoft had established over the AI research organization.⁸⁹

There are serious concerns that the non-profit's decision to dismiss Altman was overturned due to the pressure of the for-profit subsidiary, including

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Aprill, Chan Loui & Horwitz, *supra* note 3 at 294.

⁸⁶ *OpenAI Announces Leadership Transition*, *supra* note 60.

⁸⁷ *Elon Musk Sues OpenAI and Sam Altman Over 'Betrayal' of Nonprofit AI Mission*, TECHCRUNCH, (Mar. 1, 2024), <https://techcrunch.com/2024/03/01/elon-musk-openai-sam-altman-court/> [<https://perma.cc/3MH9-J3YM>].

⁸⁸ *Questioning OpenAI's Nonprofit Status*, TECH POLICY PRESS (Jan. 14, 2024), <https://www.techpolicy.press/questioning-openais-nonprofit-status/> [<https://perma.cc/KEX4-6F6D>].

⁸⁹ *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/4LWL-HYDN>].

investors in the for-profit subsidiary such as Microsoft.⁹⁰ For example, Robert Weissman, president of the nonprofit consumer advocacy organization Public Citizen, authored a letter addressed to the California Attorney General and raised significant concerns about OpenAI's 501(c)(3) status.⁹¹ As Mr. Weissman expressed, after the original dismissal of Altman, there was effectively a fight between the OpenAI nonprofit entity and the for-profit subsidiary and its stakeholders (especially the "forces in the OpenAI ecosystem prioritizing profit-making"), and the for-profit forces won.⁹² Bloomberg financial commentator Matt Levine concludes that "Microsoft can tell OpenAI's board what to do even without having a board seat."⁹³ Several developments indicate that the non-profit OpenAI may have succumbed to commercial pressures.⁹⁴ Initially, the decision to dismiss Sam Altman was reversed, reportedly influenced by for-profit entities, including major investors like Microsoft. Notably, Microsoft had proposed hiring Altman along with the entire OpenAI team. Additionally, the potential impact of Altman's departure on an impending sale of employee shares in the for-profit venture played a significant role, as it led to a mass resignation threat from OpenAI employees who valued Altman's leadership.⁹⁵

Following Altman's reinstatement, the non-profit board members who had advocated for his dismissal were themselves removed from their positions.⁹⁶ In the wake of these changes, Microsoft, OpenAI's principal investor, was granted a new 'observer' seat on the board. While it remains unclear whether this seat pertains to the board of the for-profit or the non-profit entity, the arrangement seems to bolster Microsoft's influence over the entire organization. If this seat is indeed on the non-profit board, it would further support the argument that for-profit interests are increasingly dominant.⁹⁷

Helen Toner, a departing non-profit board member, commented that the

⁹⁰ Robert Weissman, *Letter to California Attorney General on OpenAI's Nonprofit Status*, PUBLIC CITIZEN (2024), <https://www.citizen.org/article/letter-to-california-attorney-general-on-openais-nonprofit-status/> (last visited June 17, 2024) [<https://perma.cc/WA3S-3DU3>].

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*; see also OpenAI is Still an \$86 Billion Nonprofit, BLOOMBERG (Nov. 27, 2023), <https://www.bloomberg.com/opinion/articles/2023-11-27/openai-is-still-an-86-billion-nonprofit> [<https://perma.cc/3DUG-T5U4>].

⁹⁴ Weissman, *supra* note 90.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

decision to dismiss Altman was motivated by the board's duty to effectively oversee the company—a core responsibility of their role. The subsequent replacement of these board members for attempting to fulfill their fundamental obligations suggests that the non-profit entity may now play a secondary role in the overall partnership.⁹⁸

This intricate relationship, marked by substantial investments, exclusive licensing agreements, and significant influence over OpenAI's governance and strategic direction, illustrates the complex relationship between non-profit missions and for-profit corporate interests. The transformation of OpenAI under Microsoft's influence raises critical considerations about the autonomy, mission fidelity, and public benefit commitments of non-profit entities engaged in high-stakes technological development.

D. Increased Secrecy Amid Safety Concerns

Elon Musk, one of the original investors in OpenAI and a former board member, filed a complaint with the Superior Court of California in San Francisco.⁹⁹ In this complaint, Musk articulated several safety concerns related to the development and management of Artificial General Intelligence (AGI) by OpenAI, particularly under leadership that may be influenced by profit motives.¹⁰⁰ AGI represents a significant advancement in AI research, aiming to create software that can mimic human intelligence, including autonomous learning and the ability to perform tasks beyond its initial programming.¹⁰¹ Unlike current AI, which operates within specific parameters (for instance, an AI trained for image recognition cannot build websites), AGI has the potential to self-teach and solve problems it was not specifically trained to address.¹⁰² Former OpenAI board member Helen Toner has also expressed similar concerns.

In his complaint, Musk highlighted several specific issues. First, he raised the existential risk posed by AGI, drawing parallels with concerns previously voiced by Stephen Hawking. Musk is particularly worried that if AGI is not properly regulated and managed, especially if controlled by private, for-profit

⁹⁸ *Id.*

⁹⁹ Complaint, *supra* note 3.

¹⁰⁰ *Id.*

¹⁰¹ *What is Artificial General Intelligence*, AMAZON WEB SERVICE <https://aws.amazon.com/what-is/artificial-general-intelligence/> [<https://perma.cc/W3ZN-RDQG>] (last visited Sept. 22, 2024).

¹⁰² *Id.*

entities, it could become economically dominant and potentially harmful.¹⁰³

Secondly, Musk noted a significant shift in OpenAI's development philosophy. Initially, OpenAI operated with an open-source, transparent approach, which was vital for ensuring safety and fostering collaborative advancement.¹⁰⁴ However, Musk's complaint alleges that under the influence of corporate and profit-oriented decisions, particularly with Microsoft's involvement, OpenAI shifted towards a more closed and secretive development model.¹⁰⁵ This change is a departure from OpenAI's foundational mission of developing AGI for the public good, raising concerns about the increased risks associated with less oversight and restricted collaboration in safety measures.¹⁰⁶ This concern is relevant when considering the modifications to OpenAI's mission statement, as discussed in Section III, Part A of this paper. Coincidentally, OpenAI altered its mission statement, removing language that emphasized community involvement and openness around the same time that Microsoft began making substantial investments in the organization.¹⁰⁷

Musk raised concerns about OpenAI's changes in governance. He suggested that the board no longer adequately prioritized safety and ethical concerns because of increasing profit-driven motives and corporate interests (notably from Microsoft).¹⁰⁸ Restructuring the board and influence of powerful investors could undermine the objective and independent oversight necessary for the safe development of AGI.¹⁰⁹

Finally, concerns were raised about a secretive algorithm under development at OpenAI, reportedly called Q* (pronounced Q-Star).¹¹⁰ Although the specifics of Q* remain unclear, Reuters reported that several OpenAI staff members wrote

¹⁰³ *Id.*

¹⁰⁴ Complaint, *supra* note 3 at 6.

¹⁰⁵ *Id.* at 7–8.

¹⁰⁶ *Id.*

¹⁰⁷ OpenAI Form 990, *supra* notes 37–41. The sentence was removed from its mission on OpenAI's Form 990 for the fiscal year ended in 2018. Microsoft made \$1 billion investment into OpenAI in 2019.

¹⁰⁸ Complaint, *supra* note 3.

¹⁰⁹ *Id.*

¹¹⁰ Anna Tong, Jeffrey Dastin & Krystal Hu, *OpenAI Researchers Warned Board of AI Breakthrough Ahead of CEO Ouster*, *Sources Say*, REUTERS (NOV. 23, 2023, 2:52 AM), <https://www.reuters.com/technology/sam-altmans-ouster-openai-was-precipitated-by-letter-board-about-ai-breakthrough-2023-11-22/> [https://perma.cc/5D68-WX6C].

a letter warning about the potential power of this algorithm.¹¹¹ According to the complaint, it was speculated that Sam Altman’s prior firing was partially related to OpenAI’s breakthrough in realizing AGI.¹¹² Reports suggest that this development caused a rift among OpenAI board members and executives over safety issues and potential threats posed by Q*.¹¹³

Altman states only the for-profit arm of OpenAI held a fiduciary duty to OpenAI’s mission and not to the investors.¹¹⁴ Without a fiduciary duty, OpenAI could overlook important safety measures resulting in what “could very well be a situation where an AI causes great harm and thereafter AI research is banned as dangerous to public safety.”¹¹⁵ More specifically, Musk is claiming that the defendant has longstanding awareness of the significant risks posed by AGI. For instance, Altman had previously described AGI in 2015 as “probably the greatest threat to the continued existence of humanity.”¹¹⁶ Furthermore, according to OpenAI’s founding agreement, the organization must “open-source” its technology while balancing only countervailing safety considerations.¹¹⁷

In conclusion, the shift of OpenAI from an open, collaborative model towards a more closed, secretive approach in technological development raises significant concerns about the direction and governance of the nonprofit organization, particularly under the influence of profit-driven motives. Elon Musk, as a former board member and original investor of OpenAI, has voiced serious concerns through the Complaint, including the existential risks associated with AGI and the potential dangers of it being controlled by for-profit entities. In addition, this shift, particularly after substantial investments from Microsoft, suggests a potential compromise of OpenAI’s foundational mission to develop AGI for the public good. This change could lead to increased risks, less oversight, and restricted collaboration on safety measures, moving away from the collaborative spirit intended at OpenAI’s creation. Furthermore, the restructuring of OpenAI’s board, influenced by corporate interests, raises

¹¹¹ *Id.*

¹¹² Complaint, *supra* note 3.

¹¹³ *Id.*

¹¹⁴ Defendants’ Memorandum of Points and Authorities in Support of Demurrer to Complaint of plaintiff Elon Musk, Musk v. OpenAI, Case No. CGC-24-612746 (Cal. Super. Feb. 2, 2024); *see also* Defendants’ Motion to Strike Certain Prayers for Relief, Musk v. OpenAI, Case No. CGC-24-612746 (Cal. Super. Feb. 2, 2024).

¹¹⁵ Plaintiff’s Opposition to Defendants’ Motion to Strike, Musk v. OpenAI, Case No. CGC-24-612746 (Cal. Super. Feb. 2, 2024).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

additional governance concerns. The modifications in board composition and oversight practices might not adequately prioritize the necessary safety and ethical considerations required for the responsible development of AGI. These developments necessitate a reassessment of OpenAI's operational and strategic directives to ensure that its advancements in AI continue to align with the original altruistic goals, balancing innovation with the profound responsibilities that come with developing potentially transformative technologies.

III. WHAT WOULD HAPPEN IF OPENAI LOST ITS NON-PROFIT STATUS

OpenAI's unusual business structure that gave oversight of its for-profit business to a nonprofit board remains an unresolved issue.¹¹⁸ In response to these challenges, some experts and stakeholders have suggested that OpenAI dissolve its non-profit status and transition to a for-profit model.¹¹⁹ This drastic step was viewed as a potential solution to resolve the existing conflicts of interest and to streamline the company's governance structure.¹²⁰ By adopting a for-profit status, OpenAI would presumably clarify its objectives, simplifying its governance model and aligning all organizational efforts towards a unified set of goals.¹²¹ This could enhance transparency and efficiency in decision-making processes, ensuring that the board's efforts are not hampered by conflicting agendas.¹²²

CEO Sam Altman has also acknowledged that OpenAI's current corporate structure has some "bugs." [OpenAI's corporate structure] "clearly has some bugs in it, and our new board is thinking really carefully about what the best corporate structure for our mission should be."¹²³ Altman also revealed that OpenAI is "rethinking its hybrid of profit-and-non-profit corporate structure."¹²⁴

In the event of a dissolution—whether voluntary or not—all charitable assets

¹¹⁸ Jennifer Williams-Alvarez, *OpenAI's Unusual Board: Should It Change Its Structure to Govern Effectively*, WALL ST. J. (Dec. 7, 2023, 5:30 AM), <https://www.wsj.com/articles/openais-unusual-board-should-it-change-its-structure-to-govern-effectively-e3d5ee76> [<https://perma.cc/7SU6-F45C>].

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Alibaba Backtracks and Altman Speaks*, FIN. TIMES (Dec. 7, 2023), <https://www.ft.com/content/53fb7e5a-3a33-4066-9d9b-6ebdce46d4aa> [<https://perma.cc/7JSG-FCXY>]; Kenji Kawase, *Alibaba Backtracks and Altman Speaks*, NIKKEIASIA (Dec. 7, 2023, 19:25 JST), <https://asia.nikkei.com/techAsia/Alibaba-backtracks-and-Altman-speaks> [<https://perma.cc/GV2L-2B9R>].

of OpenAI must be disgorged to another charitable organization.¹²⁵ This requirement is rooted in both state and federal law, which dictate that assets of a charitable nature must continue to serve charitable purposes permanently.¹²⁶ More specifically, federal law requires a tax-exempt charitable nonprofit that is dissolving to distribute its remaining assets only to another tax-exempt organization, or to the federal government, or to a state or local government for a public purpose.¹²⁷ And “assets” include cash, tangible property such as vehicles or office equipment, and/or intangible property such as data or intellectual property.¹²⁸ As to applicable state law, the California Supreme Court has explicitly held that assets held by an organization formed for charitable purposes are considered to be held in trust for those specific purposes.¹²⁹ Therefore, in the event of dissolution, OpenAI should enforce the distribution of its assets in accordance with their charitable trust status.¹³⁰

As to valuation of assets, the conversion of one charitable healthcare organization into for-profit entity sets a precedent.¹³¹ For instance, when Blue Cross of California (“BCC”) converted its operations to a for-profit model, the state of California intervened to safeguard public interests.¹³² When BCC transferred a majority of its assets to a for-profit subsidiary, California state regulators initially approved the transaction without addressing the distribution of charitable assets.¹³³ However, concerns soon arose about the preservation of

¹²⁵ Weissman, *supra* note 85.

¹²⁶ *Id.*

¹²⁷ INTERNAL REVENUE SERV., *Charity - Required Provisions for Organizing Documents*, (Aug. 19, 2024), <https://www.irs.gov/charities-non-profits/charitable-organizations/charity-required-provisions-for-organizing-documents> [<https://perma.cc/2JER-TVGP>].

¹²⁸ NAT’L COUNS. OF NONPROFITS, *Dissolving a Nonprofit Corporation*, (2024), <https://www.councilofnonprofits.org/running-nonprofit/governance-leadership/dissolving-nonprofit-corporation> [<https://perma.cc/LD3Y-7JM2>].

¹²⁹ *See* Weissman, *supra* note 85; *see also* Pac. Home v. L.A. Cnty., 264 P.2d 539, 543 (Cal. 1953).

¹³⁰ Weissman, *supra* note 90.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Conversion and Preservation of Charitable Assets of Blue Cross and Blue Shield Plans: How States Have Protected or Failed to Protect the Public Interest, CMTY. CATALYST (March 2004), https://www.communitycatalyst.org/wpcontent/uploads/2022/11/conversion_and_prese

these assets for charitable purposes.¹³⁴ Subsequent negotiations between the Department of Corporations and BCC led to the decision that BCC would distribute all of its assets, over \$3.2 billion, to two newly established grant-making health foundations—the California Endowment and the California HealthCare Foundation.¹³⁵ To ensure an equitable distribution and proper valuation of assets, the state regulator hired independent consultants.¹³⁶ These experts assessed the total value of the company and played a crucial role in determining the amount and form of assets (cash and equity interest in the new for-profit entity) to be distributed to the foundations.¹³⁷

IV. FUTURE IMPLICATIONS AND RECOMMENDATIONS

OpenAI could follow a similar route, although it is potentially more challenging to value OpenAI's assets, particularly the value of its right to future profits and technology from the for-profit subsidiary.¹³⁸ Furthermore, following California law, a non-profit organization that is dissolving or converting must redistribute its assets to another charity with the same or similar purposes.¹³⁹ Therefore, the funds obtained from OpenAI's investors — equivalent to the value of OpenAI — should be allocated to foundations that focus on promoting ethics and safety in artificial intelligence.¹⁴⁰

The case of OpenAI serves as a compelling catalyst for a broader discussion on the future of non-profit governance in the rapidly evolving field of artificial intelligence. As we stand at the precipice of potentially transformative technological advancements, the legal and ethical frameworks governing AI development must evolve in tandem with the technology itself. This necessity for evolution extends beyond mere regulatory adjustments; it calls for a fundamental reimagining of how we conceptualize and structure organizations at the forefront of AI research and development.

The traditional model of non-profit governance, while effective in many contexts, appears increasingly ill-equipped to handle the unique challenges posed by organizations like OpenAI. These entities operate at the intersection of

rvation_of_charitable_assets_of_blue_cross_and_blue_shield_plans_mar04.pdf
[<https://perma.cc/876B-Q2FY>].

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Weissman, *supra* note 90.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

cutting-edge technology, significant financial interests, and profound ethical considerations. The tension between rapid innovation and maintaining a steadfast commitment to public benefit is not easily resolved within existing frameworks. As such, there is an urgent need for research into novel governance structures that can better balance these competing imperatives.

One potential avenue for exploration is the concept of dynamic, multi-stakeholder governance models. These models would go beyond the traditional board structure to incorporate a diverse array of voices and perspectives. This could include AI ethics experts, public interest advocates, representatives from potentially affected communities, and individuals with expertise in both non-profit management and for-profit tech innovation. The key challenge here would be to design a system that allows for efficient decision-making while ensuring that all relevant perspectives are adequately considered.

Moreover, the governance structure should be adaptable, capable of evolving as the organization's work and its potential impacts change over time. This might involve regular reassessments of the organization's mission and activities, with a formalized process for adjusting governance structures and decision-making processes as needed. The goal would be to create a system that can maintain alignment with charitable purposes even as the nature of the organization's work shifts in response to technological advancements and market pressures.

In parallel with these governance innovations, there is a pressing need for regulatory frameworks specifically tailored to AI-focused non-profits. The current regulatory landscape, largely designed with traditional charitable organizations in mind, lacks the nuance and flexibility required to effectively oversee entities engaged in potentially world-altering technological development. New guidelines from regulatory bodies like the IRS should address the particular challenges of maintaining charitable status while engaging in work that could lead to immensely valuable intellectual property.

These guidelines might include more stringent and specialized reporting requirements, mandating detailed disclosures about technological advancements, potential risks, and commercial relationships. They could also require the establishment of independent ethics review boards, similar to Institutional Review Boards in medical research, but tailored to the specific challenges of AI development. These boards would provide ongoing oversight and ethical guidance, helping to ensure that the organization's activities remain aligned with its charitable mission and the broader public interest.

Another critical area for consideration is the tension between open-source principles and proprietary development in AI research. The field of AI has

benefited enormously from open collaboration and the free exchange of ideas. However, as the potential commercial value of AI breakthroughs has become increasingly apparent, there has been a shift towards more closed, proprietary development models. This shift, exemplified by OpenAI's trajectory, raises important questions about how to balance the benefits of open collaboration with the incentives provided by intellectual property protections.

Future policy efforts should explore innovative approaches to this challenge. This might include the development of new licensing models that encourage open collaboration while still allowing for some degree of proprietary protection. Another possibility is the creation of public-private partnership structures that facilitate collaboration between non-profit research entities and for-profit companies, while ensuring that key developments remain accessible for public benefit. The goal should be to create an ecosystem that fosters innovation while preserving the principles of openness and public benefit that are central to the non-profit ethos.

Perhaps the most pressing concern raised by the OpenAI case is the potential existential risk posed by advanced AI systems, particularly AGI. The gravity of this issue cannot be overstated—we are dealing with technology that could fundamentally reshape human society, for better or worse. As such, there is an urgent need for robust global governance frameworks to oversee and regulate AGI development.

These frameworks should go beyond national boundaries, recognizing the global nature of both the potential benefits and risks of AGI. They might include international cooperative mechanisms for sharing information, setting standards, and collectively addressing safety concerns. Additionally, there should be mandatory safety protocols and testing requirements for advanced AI systems before they can be deployed. These protocols should be rigorous and continuously updated to keep pace with technological advancements.

Furthermore, organizations engaged in AGI research should be required to conduct and publicly disclose comprehensive long-term impact assessments. These assessments should consider not just the immediate applications of the technology, but its potential long-term effects on society, the economy, and even the future of human cognition and decision-making. By mandating this kind of forward-looking analysis, we can encourage a more thoughtful and responsible approach to AI development.

In conclusion, the challenges posed by organizations like OpenAI demand a comprehensive rethinking of our legal, ethical, and governance frameworks. By addressing these critical areas—from innovative governance structures to tailored regulatory approaches, from balancing open-source and proprietary

development to establishing robust safety protocols—we can work towards a future where the immense potential of AI is realized in a way that truly benefits all of humanity. This is no small task, but given the stakes involved, it is one that must be undertaken with urgency and diligence.

V. CONCLUSION

OpenAI's transformation from a non-profit research organization to a hybrid entity with a for-profit subsidiary has raised significant concerns about its ability to maintain its original charitable mission. The blurred lines between OpenAI's non-profit values and commercial interests, intensified by substantial investments from Microsoft and the consolidation of CEO Sam Altman's influence, have led to questions about the prioritization of profit motives over the responsible development of artificial general intelligence (AGI) for the benefit of humanity. The November 2023 developments, which saw the brief dismissal and subsequent reinstatement of Altman as CEO, along with the resignation of board members who had expressed concerns about the accelerated and potentially reckless development of AI, suggest that the non-profit entity may have yielded to commercial pressures from its for-profit subsidiary and investors. Furthermore, OpenAI's modifications to its mission statement over time and its increasing secrecy about technological advancements indicate a departure from its original principles of transparency, collaboration, and the prioritization of safety and ethical considerations in AGI development. The case of OpenAI serves as a compelling example of the complex issues faced by organizations operating at the intersection of cutting-edge AI technology and public benefit, underscoring the urgent need for innovative governance structures, tailored regulatory approaches, and global frameworks for overseeing the development of artificial general intelligence (AGI).

As OpenAI navigates the tension between its non-profit values and commercial pressures, it is crucial that it remains transparent, accountable, and steadfast in its dedication to its original mission. Failing to do so may necessitate a fundamental reevaluation of its organizational structure, potentially leading to the dissolution of its non-profit status and the redistribution of its charitable assets. Ultimately, the challenges posed by OpenAI highlight the need for a comprehensive rethinking of the legal, ethical, and governance frameworks surrounding AI development to ensure that the immense potential of this technology is realized in a way that truly benefits humanity.