Ownership at OpenAI

From the Perspective of Enterprise Foundation Governance[1]

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Working document – Comments are most welcome

Overview

In November 2023, the Board of Directors of OpenAI fired its popular CEO, Sam Altman, because it had lost confidence in him, and concluded that he was hindering the board's ability to properly exercise its duties. The decision outraged employees and investors, including Microsoft which has a $13bn investment in OpenAI, and ignited a brief governance crisis. After mounting pressure from these key stakeholders, the crisis ended with Sam Altman returning as CEO and most board members resigning. The turmoil brought the importance and impacts of corporate governance to the attention of business and startup communities alike, and drew attention to OpenAI's somewhat unusual ownership structure: a self-owning and self-governing non-profit organisation controlling a for-profit company, where investors have a contractual claim on a portion of the profits but no formal control, and the ultimate decision-making authority is the board of the non-profit, which appoints and removes itself, has no personal financial interest, and has a fiduciary obligation to the non-profits mission of building general-purpose artificial intelligence that safely benefits humanity. This arrangement resembles the ownership found at enterprise foundations, and thus provides an interesting opportunity to study this relatively rare type of organisational control. This case therefore seeks to understand corporate governance at OpenAI and the turmoil in November 2023, to deduct what other companies and boards can learn from it. The case shows that although corporate governance of OpenAI has been intentionally designed to advance the mission and protect this from financial obligations, in particular the short-term interests of investors, de facto control resides with Microsoft, undermining the formal governance structure. Moreover, the case demonstrates that foundation-like ownership can under certain extreme circumstances be vulnerable, and might not be a good fit for a startup like OpenAI with significant capital requirements and enormous commercial potential.

Keywords: OpenAI, corporate governance, nonprofit ownership, enterprise foundation

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Contents

1. INTRODUCTION

When the American artificial intelligence (AI) research and deployment company OpenAI released its AI-powered chatbot ChatGPT for public use in November 2022, it went from being relatively unknown outside the tech community to one of the most talked-about companies in business and politics almost overnight. Founded as a nonprofit company, OpenAI is on a mission *"to ensure that artificial general intelligence benefits all of humanity"* (About, n.d.). To fund its activities the company initially relied entirely on donations. However, a few years into operations it became clear that donations alone would not scale with the cost of computing power and talent required to develop AI. To be able to raise capital from investors and attract and retain employees with equity incentives, OpenAI therefore established a for-profit subsidiary and transferred most employees and activities to this (Our structure, 2023). Investors and employees could obtain economic rights in the for-profit entity, the right to benefit from the value it created, but the for-profit remained entirely controlled by the self-owning and self-governing non-profit. Moreover, these economic rights were capped, meaning that there would be a limit to the return that could be received. OpenAI has referred to this as a "capped-profit structure" (Our structure, 2023), and it has enabled the company to attract vast amounts of funding, most notably from Microsoft, which has allegedly invested $13bn in OpenAI and obtained exclusive licensing rights to its technology (Bass & Nylen, 2023). The ownership structure has since evolved (see section 4), but the logic remains the same.

When OpenAI began commercialising its products, tensions arose between the mission and actors with commercial and financial interests. In particular, between the obligation to prioritise slow and safe development of AI and broadly distributed benefits on the one hand, and the opportunity for rapidly scaling activities and monetising the user base on the other. Things culminated in November 2023, roughly a year after the release of the by then massively popular ChatGPT, when the board of directors declared that it had lost confidence in the otherwise well-regarded CEO and co-founder Sam Altman, and therefore fired him and removed him from the board, as well as forced Chairman and co-founder Greg Brockman to retire from the board (OpenAI announces leadership transition, 2023). This sent shockwaves through the tech community and outraged investors and employees. What followed was five tumultuous days during which almost all of OpenAI's employees threatened to leave if Sam Altman was not reinstated as CEO, and Microsoft hired Sam Altman and Greg Brockman to head up a new AI division and allegedly offered all employees at OpenAI the opportunity to follow the two (Dastin & Soni, 2023). Eventually, the board had to succumb to mounting pressures from investors, employees, and other stakeholders, and Sam Altman returned as CEO of OpenAI and later also rejoined the board, while three out of four board members that had fired him resigned (Sam Altman returns as CEO, 2023; Review completed, 2024). The events have since been the topic of much debate, and while some have blamed the board that fired Sam Altman for jeopardising the commercial potential of OpenAI, others have expressed concerns that the mission of prioritising safe development of AI and broadly distributed benefits is being neglected, and that OpenAI has come under too much influence of Microsoft. Co-founder Elon Musk, who donated substantial amounts to OpenAI before cutting ties with the company in 2018, has been particularly outspoken about these concerns and, bearing in mind his potential self-serving motives, has recently sued the company for breaching the founding agreement and abandoning the mission (Nidumolu, Soni, Dang, 2024).

The case is interesting not just because it concerns a massively successful startup where corporate governance suddenly becomes a source of disturbance — history is full of those — but because the events brought attention to the somewhat unusual ownership structure at OpenAI: a self-owning and self-governing non-profit controlling a for-profit. At OpenAI investors have a claim on profits but no formal control. Instead, the ultimate decision-making authority is the board of the non-profit which appoints and removes itself, has no personal financial interest in the company, and holds a fiduciary obligation to the mission rather than to investors. The arrangement, which combines philanthropy and business, and contradicts traditional agency theory because of the absence of material incentives, bears resemblance to the ownership found at enterprise foundations. Although this type of ownership has been used for decades by successful corporations in Northern European countries, particularly in Denmark, it remains uncommon in a global context, especially so in the world of startups. OpenAI therefore offers a unique opportunity for further developing our understanding of this rare corporate animal.

The case shows a peculiar situation with foundation-like ownership, where formal control is held by the board of the non-profit, but de facto control resides outside the "foundation", most notably in the hands of the largest investor, Microsoft. It demonstrates how informal power can under certain conditions trump the power held by the formal decision-making authority, and how pressure from key stakeholders can undermine formal governance, underscoring the importance of properly balancing tensions that can exist between stakeholders and the mission of the foundation. Furthermore, the case highlights that foundation-like ownership can under certain extreme circumstances be vulnerable, and that it might not be a good fit for a startup like OpenAI, where the commercial potential is immense and need for capital equally significant.

After this this introduction, the case is structured as follows: 1) an introduction to enterprise foundations; 2) a more thorough introduction to OpenAI, detailing why the company was established and the mission and principles it is governed by; 3) an overview of how ownership and control is structured at OpenAI; 4) an account of the events leading up to the governance crisis in November 2023, including why the for-profit was established, the partnership with Microsoft, and concerns raised about these developments; 5) an examination of how the governance crisis unfolded; 6) a discussion of corporate governance at OpenAI; 7) a summary of the key lessons that can be drawn from the case.

Important to note is that only scarce official information is available regarding the governance at OpenAI and the recent turmoil. This case study therefore relies to a large extent on reports by the media, which often cites insiders or other unofficial sources. Although efforts have been made to sort out information of mostly speculative character, the information contained in this case will therefore inevitably be subject to some degree of uncertainty. The case study does not attempt to address the ongoing discussion regarding the impacts and ethics of AI.

2. ENTERPRISE FOUNDATIONS

Enterprise foundations are foundations that own and control companies. They represent an interesting type of ownership that combines philanthropic goals of a self-owning and self-governing foundation with for-profit activities in an operating company, thus distinct from both conventional for-profit ownership and purely charitable foundations.

The foundation is established when an individual donates the ownership of a company to a foundation. This can for example be an entrepreneur who, after having built a successful company, wishes to secure the legacy of this. The transfer of property is irrevocable, and the foundation is independent of its founder and is said to be self-owning and self-governing, meaning that the foundation has no owners or members with a claim on profits or control, and is governed by charter (Thomsen & Kavadis, 2022). The charter can be considered the constitution of the foundation, and specifies the legally binding purpose and governing rules of the foundation as defined by the founder, thus reflecting the will of the founder. The purpose of the foundation is non-selfish, meaning it goes beyond benefiting the founder, and it is typically a dual-purpose: to ensure continuation of the operating company, theoretically in perpetuity, and to contribute to some philanthropic cause defined by the founder (Thomsen & Kavadis, 2022). Because there is no owner, the foundation is the residual claimant in the operating company, and earnings by the operating company therefore accrue to the foundation and are either reinvested in the operating company or donated to the philanthropic cause (Hansmann & Thomsen, 2021). The foundation is managed by a board of directors tasked with overseeing that the foundation is operated in accordance with the charter (Thomsen & Kavadis, 2022). Directors on this board are independent, they appoint and remove themselves, and their compensation is not tied to the profitability of the operating company (Hansmann & Thomsen, 2021).

While the operating company is controlled by the foundation, it exists as its own separate entity, with its own legal personality, and under most jurisdictions it is therefore required to have its own separate board. Directors on the board of the operating company can be, and in some instances are, the same individuals as the directors on the foundation board. However, good governance of enterprise foundations generally advises against this, and suggests that enterprise foundations should maintain a sufficient level of 'managerial distance' (Hansmann & Thomsen, 2013), understood as *"the detachment of the foundation from the operating company"* (Thomsen, 2017, p. 162). That is, the foundation and the operating company should have their own distinct board of directors, with minimal overlap in membership, because this increases intensity, clarity, and objectivity and makes the directors on the foundation board behave more as traditional owners than as managers (Hansmann & Thomsen, 2013). Some overlap can, however, be beneficial to allow for sufficient flow of information from the operating company to the foundation.

Figure 1: *Basic ownership structure of an enterprise foundation*

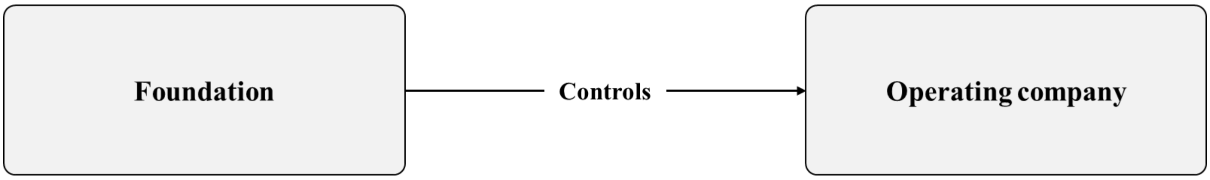
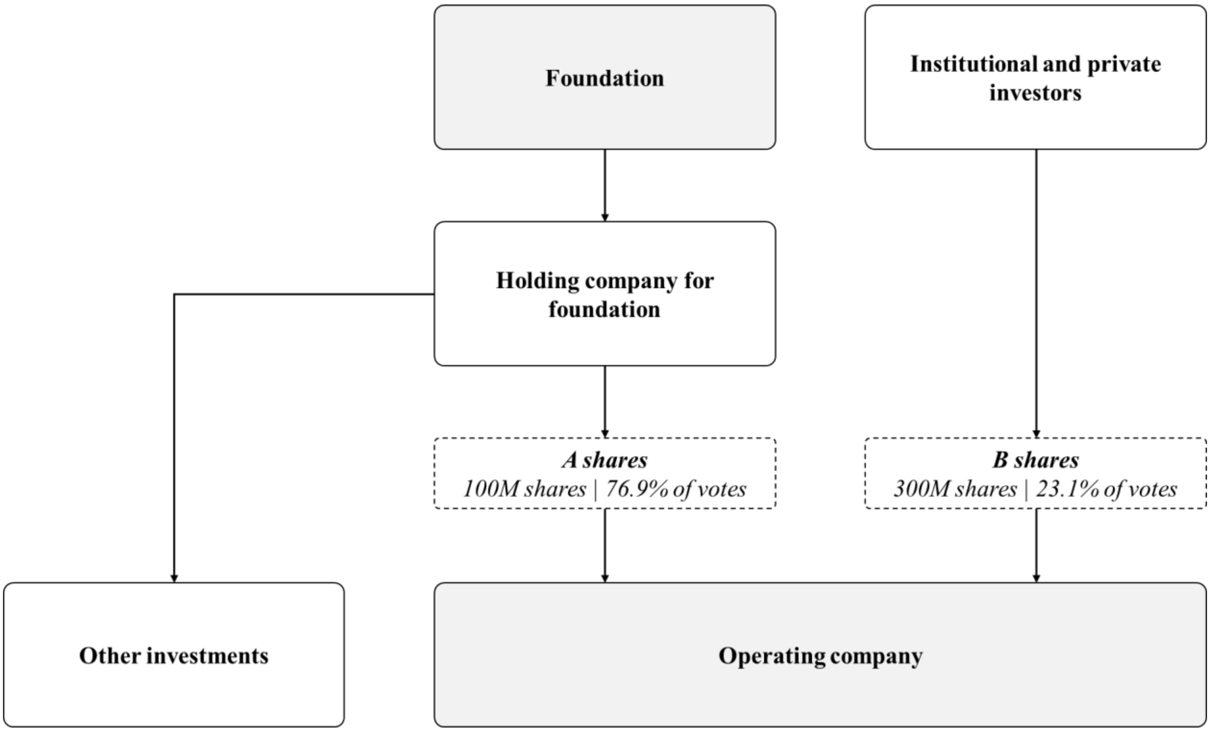


Figure 1 depicts the ownership structure of an enterprise foundation in its most basic form. For most enterprise foundations however, the structure is more complex. While the charter typically stipulates that the foundation must have a controlling influence in the original operating company, this does not mean that it must wholly own the company (Thomsen & Kavadis, 2022). Accordingly, many of the largest foundation-owned companies are publicly listed, and thus have shareholders other than the foundation, but these shareholders have no control, whereby the operating company theoretically remains free from potential short-term pressures from myopic investors. Control can be kept by simply retaining a majority of the shares, or by for instance applying a dual-class share structure where a class of shares with dividend rights but limited or no voting rights is offered to the general public, while another class of shares with more voting power is held by the foundation. In this way, an enterprise foundation can benefit from equity markets while retaining control of the operating company, by decoupling control rights from economic rights. Moreover, some enterprise foundations, if the charter allows for it, own and control several operating companies and/or hold minority and non-controlling stakes in other companies. Figure 2 provides an example of how ownership of a publicly listed foundation-owned company could hypothetically look with a dual-class share structure.

Figure 2: *Hypothetical ownership structure of publicly listed foundation-owned company*



Note: Each A share carries 10 votes, each B share carries 1 vote.

Enterprise foundations not only represent an interesting alternative to conventional ownership structures, they also defy classic economic theory (Thomsen & Kavadis, 2022). Ever since Adam Smith famously argued that *"It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own self-interest"* (Smith, 1776/1981, p. 19), the assumptions of rational and self-interested individuals that are driven by a personal profit motive have been central to our thinking about the firm. So too in agency theory, where the basic problem (Ross, 1973) arises with the separation of ownership and control (Berle & Means, 1932), a misalignment in interests of the principal and the agent, and the expectation that the agent (manager) will use his power to pursue personal interests at the expense of the principal (owner). Accordingly, an important objective of corporate governance has been to ensure that the manager acts in the best interest of the owner, solving this task by means of incentive schemes, control mechanisms, and more. But at enterprise foundations there are no owners, and the Directors tasked with overseeing the foundation have no or very limited financial incentives and thus lack the personal profit motive, and are theoretically free from removal by outsiders and not subject to the market for corporate control (Thomsen & Kavadis, 2022). Enterprise foundations thus violate the basic principles of agency theory, which would predict that because of the incentive disadvantage, foundation ownership should be inefficient and foundation-owned companies should underperform compared to conventional for-profit companies (Thomsen, 2017).

Surprisingly however, research has found that foundation-owned companies on average do not underperform compared to their non-foundation owned counterparts, if anything, their economic performance is better (Thomsen, 1996; Herrmann & Franke, 2002; Hansmann & Thomsen, 2021). In addition, foundation-owned companies tend to survive longer (Thomsen et al., 2018). The reason for this good performance, and the principal advantage of foundation ownership, as argued by existing research, is that it promotes long-term, stable ownership. Because foundation-owned companies are less subject to short-term pressures from financial markets, and have firm survival as a priority, theoretically with an indefinite time-horizon, they are for example better able to establish and maintain long-term relations with stakeholders based on trust, because they for instance have less incentive to breach an implicit contract or cut cost by lowering quality to boost short-term profit (Thomsen, 2017). Furthermore, they are typically more inclined to pursue long-term investments that might not yield immediate returns but have the potential for significant long-term benefits.

Research has also argued that enterprise foundations have a significant positive impact on society. Foundation-owned companies can prioritise long-term value creation and for instance typically invest more in research and development (Thomsen, 2017), they typically perform better in terms of sustainability (Schröder & Thomsen, 2023), and the foundations donate to philanthropic causes such as research, education or social projects (Thomsen, 2017). Moreover, because the alternative to foundation ownership would be ownership by wealthy private individuals, foundation ownership typically reduces inequality, and because profits accrue to the foundation rather than to private individuals, it likewise reduces income inequality (Thomsen, 2022).

Enterprise foundations are relatively common in Northern Europe, in particular in Denmark, where well-known companies such as Novo Nordisk, Carlsberg, and Maersk are all controlled by a foundation. Combined, foundation-owned companies in Denmark represent 12% of the country's private sector turnover (Feldthusen, 2023), 63% of total market capitalisation, and 50% of investments in research and development (Sanders & Thomsen, 2023). In other European countries the economic importance of enterprise foundations is in many cases, although less significant, still considerable. In Austria for example, foundation-owned companies account for 26.1% of total market capitalisation, while in Sweden their share is 18.9%, in the Netherlands 14.2%, in Norway 7.9%, in Italy 6.3%, in Switzerland 5.0%, and in Luxembourg 61.7% (Sanders & Thomsen, 2023). Examples of well-known foundation-owned companies from other European countries include IKEA from Sweden, Robert Bosch in Germany, Rolex in Switzerland, Pierre Fabre in France, The Guardian in the UK, Anheuser-Busch InBev in Belgium, and Caixa Bank in Spain (Sanders & Thomsen, 2023). While enterprise foundations do exist outside Europe, one example being the Indian mega-conglomerate Tata Group (Thomsen, 2017), they are rare when considered in a global context, accounting for just 0.6% of listed companies and 1.1% of global market capitalisation (Sanders & Thomsen, 2023). Enterprise foundations have historically also existed in the United States, but the Tax Reform Act of 1969 introduced stringent regulations that largely prohibited them (Hansmann & Thomsen, 2021). Most notably, through section 4943 on excess business holdings, which generally limited permitted holdings by a private foundation in a conventional for-profit corporation to 20% of the voting stock, and imposed a 200% tax of excess holding value if not disposed of within a certain period, thus effectively preventing it from holding a controlling ownership stake (Eldar, 2023). However, because these restrictions on control only apply to private foundations, other types of non-profits can be used to establish ownership structures that resemble that of an enterprise foundation (Eldar, 2023). Therefore, although they remain rare, it is still possible to find conventional American for-profits that are controlled by de facto enterprise foundations, including the well-known companies Hershey's, Mozilla, and OpenAI.

3. ABOUT OPENAI

OpenAI was founded in late 2015 as a non-profit artificial intelligence research lab with a goal 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"* (Brockman & Sutskever, 2015). The founding team was a small group of research engineers, scientists, and entrepreneurs, including some of the most well-known figures within the Silicon Valley tech community. Among the most prominent members were Elon Musk (founder of Tesla, SpaceX and several other ventures), Sam Altman (former President of the venture capital firm and startup incubator Y Combinator and now CEO of OpenAI), Greg Brockman (former CTO of payments processing giant Stripe and later Chairman of the Board of Directors of OpenAI), and Ilya Sutskever (a leading machine learning researcher and now Chief Scientist at OpenAI). Concerned with the potentially adverse effect AI could have on society, and unconvinced of established corporations' ability to safely develop this technology, it was thought to *"be important to have a leading research institution which can prioritize a good outcome for all over its own self-interest."* (Introducing OpenAI, 2015). The company should serve as a transparent and open-source counterweight to the for-profit tech giants, with no obligations to shareholders and thereby the freedom to prioritise safe and responsible development of AI and broadly distributed benefits.

Since then, OpenAI has made remarkable progress in the research of artificial intelligence. Using deep learning and reinforcement learning technologies, and leveraging large amounts of data, they have built generative models that are capable of producing original text, image, and video (Pioneering research on the path to AGI, n.d.). Most well-known is their ChatGPT (GPT stands for Generative Pre-trained Transformer), an advanced language processing model trained to understand and generate human-like text. It enables users to interact with it in ways that resemble a human-like conversation by entering text and having it answer questions, produce essays, write poetry, compose emails, and much more. They monetize this using a freemium model where users can access a basic model free of charge or pay a subscription fee to access a more advanced model with additional features (Introducing ChatGPT Plus, 2023). First released for public use in November 2022 (Introducing ChatGPT, 2022), OpenAI has since worked continuously on improving the underlying GPT technology and increasing the use case of ChatGPT. For example, adding voice and image capabilities (ChatGPT can now see, hear, and speak, 2023), introducing an enterprise version with additional features and privacy safeguards (Introducing ChatGPT Enterprise, 2023), enabling developers to create their own GPTs, lightweight customised versions of ChatGPT (Introducing GPTs, 2023), and opening GPT Store, a marketplace for GPT applications where developers will be able to earn revenue based on user engagement (Introducing the GPT Store, 2024).

3.1 Financial situation

Only limited official information has been released from OpenAI containing verified financial data. However, it appears well established that since the release of ChatGPT, OpenAI has experienced almost unprecedented growth in users and revenue. ChatGPT allegedly achieved more than a million users within just five days (Greg Brockman, 2022), and an estimated 100M monthly active users in January 2023, just two months after its launch, making it the fastest growing consumer application in history (Hu, 2023a), until Meta's social media platform Threads launched in July 2023 (Paul & Sriram, 2023). The growth rate has since decelerated, and a reported 180.5M unique visitors were using ChatGPT as of August 2023 (Tong, 2023).

Table 1: *OpenAI overview*

Year founded	2015
Revenue	USD 1.6bn (2023 estimate)
Valuation	USD 80bn (rumoured valuation in early 2024 tender offer)
Employees	770+ (November 2023 estimate)
Locations	San Francisco (US), London (UK), Dublin (Ireland)
Mission	"to build general-purpose artificial intelligence (AI) that safely benefits humanity, unconstrained by a need to generate financial return." (Form 990, 2022)

According to The Information, a San Francisco based news publication covering technology industries, annualised revenue of OpenAI's for-profit entity reached $1.6bn in 2023 (Heeter, Efrati, & Palazzolo, 2023), the first full year during which revenue was being generated from its popular ChatGPT. In comparison, the for-profits recorded revenue in 2022 was just $28M (Efrati & Holmes, 2023). The 2023 revenue far exceeds OpenAI's expectations pitched to investors in 2022 of, according to Reuters, $200M in 2023 and $1bn in 2024 (Dastin, Hu, & Daves, 2022), indicating that the current commercial success has taken the company somewhat by surprise. Whether OpenAI is currently turning a profit remains unclear. Developing AI is incredibly expensive, requiring massive computing power, and losses in 2022 are reported to have been $540M (Woo & Efrati, 2023). Although revenue has since increased dramatically following the success of ChatGPT, the cost of developing and operating this and other products has likely followed.

The valuation of the company has likewise soared. In April 2023, it was reported that OpenAI closed a share sale worth more than $300M at a valuation of more than $27bn (OpenAI closes $300 million, 2023). In December 2023 it was reported that OpenAI was in early talks of a round of funding that would value the company at $100bn (Tan, Ludlow, & Ghaffary, 2023). In February 2024 a tender offer was allegedly completed that allowed employees to cash out on their shares at a valuation of more than $80bn, making OpenAI the third most valuable startup in the world behind only TikTok parent ByteDance and Elon Musk's SpaceX (Metz & Mickle, 2024).

3.2 Mission

Fundamental to OpenAI is its mission *"to build general-purpose artificial intelligence (AI) that safely benefits humanity, unconstrained by a need to generate financial return."* (Form 990, 2022). This serves as the governing objective and establishes how the company is to be controlled and directed. For clarification, artificial general intelligence (AGI) is a theoretical form of AI that, similar to human intelligence, can understand, learn, and apply intelligence across a wide range of tasks and domains. OpenAI defines AGI as *"a highly autonomous system that outperforms humans at most economically valuable work"* (Our structure, 2023). Although OpenAI has made significant advancements in AI development, AGI still has not been achieved.

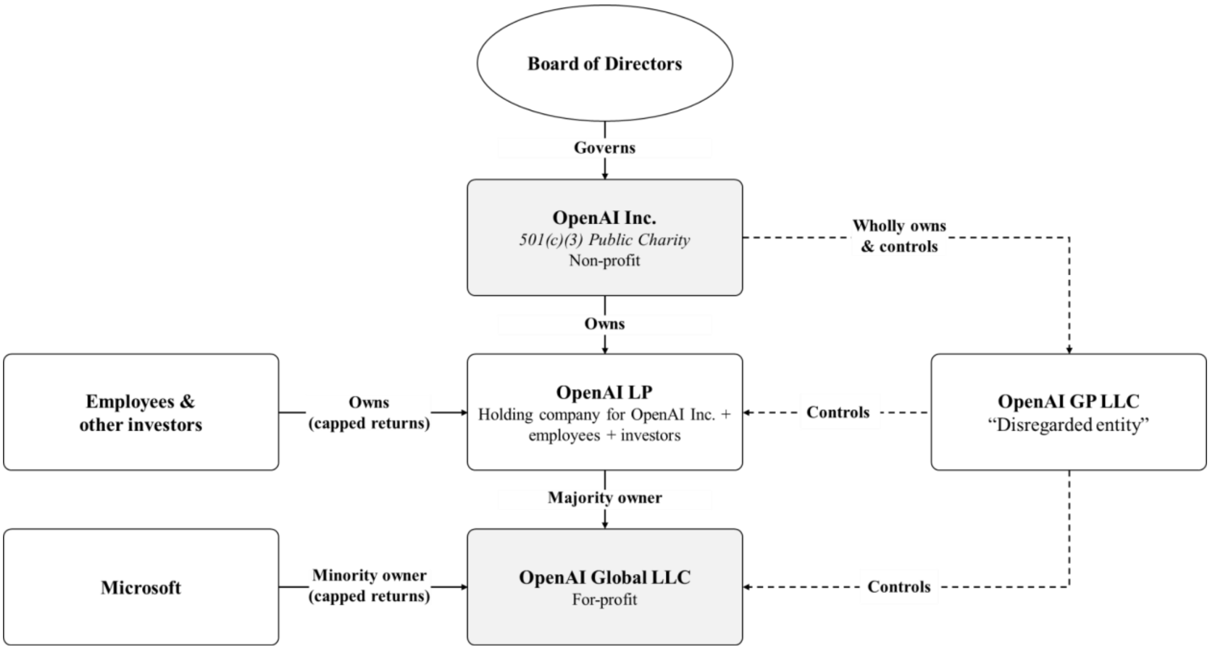
Implicit in the mission is that while it is a priority to ensure that <u>if</u> AGI is built this will be for the benefit of humanity, it ultimately does not have to be OpenAI that builds it. As stated in their Charter, while OpenAI *"will attempt to directly build safe and beneficial AGI"* (OpenAI Charter, 2018), they *"will also consider [their] mission fulfilled if [their] work aids others to achieve this outcome"* (OpenAI Charter, 2018). What happens with OpenAI after safe AGI has potentially been developed and the mission thereby fulfilled remains unclear.

In their charter OpenAI further describes four principles that are guiding them in the pursuit of their mission: broadly distributed benefits, long-term safety, technical leadership, and cooperative orientation (OpenAI Charter, 2018). Appendix I presents these principles in more detail. The third principle, 'technical leadership' is arguably the most commercially oriented, establishing a commitment to *"be on the cutting edge of AI capabilities"* (OpenAI Charter, 2018), whereas the other principles appear more oriented towards public benefit. The first principle, 'broadly distributed benefits', introduces a commitment *"to use any influence we obtain over AGI's deployment to ensure it is used for the benefit of all, and to avoid enabling uses of AI or AGI that harm humanity or unduly concentrate power"* (OpenAI Charter, 2018) and, interestingly, establishes that OpenAI's *"primary fiduciary duty is to humanity"* (OpenAI Charter, 2018). The second principle, 'long-term safety', somewhat constrains their commercial mandate by prioritising safe development of AI over fast development of AI and, quite unusually, states that *"if a value-aligned, safety-conscious project comes close to building AGI before we do, we commit to stop competing with and start assisting this project"* (OpenAI Charter, 2018). The fourth principle, 'cooperative orientation', highlights the openness origins of the company and establishes a commitment to *"actively cooperate with other research and policy institutions"* and *"provid[e] public goods that help society navigate the path to AGI"* (OpenAI Charter, 2018) by publishing relevant AI research. However, the Charter also states that safety and security concerns can dictate the type of research being shared, thereby providing OpenAI with somewhat of an escape clause regarding its openness commitments.

4. OWNERSHIP STRUCTURE

OpenAI has attempted to design a structure that combines its non-profit mission with the need for raising enough capital to fund its activities and attracting and motivating talented employees with equity incentives. The result is what they refer to as a "capped-profit structure", where several for-profit subsidiaries (OpenAI LP and OpenAI Global LLC) are fully controlled by a self-owning and self-governing non-profit entity (OpenAI Inc.), by having this non-profit wholly own and control a "disregarded entity" (OpenAI GP LLC) which acts as the general partner and controls OpenAI LP, and acts as a manager and governs OpenAI Global LLC (Our structure, 2023). The for-profit entities have a cap on the return investors and others can receive. That is, investors and employees are allowed to hold economic rights, a contractual claim on a certain percentage of profits until the agreed upon return on their investment has been achieved, but no control rights. The absence of control rights theoretically ensures protection from short-term interests of investors. The governing body and ultimate decision-making authority in OpenAI's structure is the board of directors of the non-profit, whose primary fiduciary obligation is to the mission of the OpenAI rather than to investors, employees, or other stakeholders. A majority of Directors are independent and thus have no financial interest in the company. Microsoft has a significant investment in one of the for-profit subsidiaries, and has recently become a non-voting board observer in the non-profit. Figure 3 presents an overview of OpenAI's ownership structure.

Figure 3: *OpenAI's ownership structure (source: Our structure, 2023)*



4.1 OpenAI Inc.

Central to the ownership structure is OpenAI Inc., a self-owning and self-governing entity incorporated in 2015 as a non-profit corporation under the laws of Delaware, tax-exempt for charitable purposes under section 501(c)(3) of the Internal Revenue Code, and eligible to receive tax-deductible contributions (Exemption Requirements, 2024).[2] The organisation must exist exclusively for charitable and/or educational purposes as set forth in section 501(c)(3), and the entity is only allowed to change the purpose to the extent that it remains consistent with the status as a 501(c)(3) organisation (Exemption Requirements, 2024). Importantly, OpenAI Inc. is as a 501(c)(3) tax-exempt charitable organisation, or public charity, not to be confused with a 501(c)(3) tax-exempt private foundation (EO Operational Requirements, 2023), and therefore not subject to the section 4943 restrictions on excess business holdings described in section 2 of this paper.

The Certificate of Incorporation for OpenAI Inc. specifies its purpose as being *"to provide funding for research, development and distribution of technology related to artificial*

[2] For clarification, being a non-profit does not mean that the organisation cannot make a profit, merely that the profits does not accrue to an owner or a group of owners, but instead is used for the charitable purpose, in OpenAI's case the mission of safe and beneficial AGI, for example by being reinvested into research and development, whereby profits are benefiting the public good instead of private individuals.

intelligence" (Musk v. Altman, 2024, p. 13). The document further states that *"[t]he resulting technology will benefit the public and the corporation will seek to open source technology for the public benefit when applicable. The corporation is not organized for the private gain of any person."* (Musk v. Altman, 2024, p. 13). Moreover, the document specifies that the property of OpenAI inc. is irrevocably dedicated to the purpose previously described, and that *"no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person"* (Musk v. Altman, 2024, p. 13). If OpenAI Inc. is to cease to exist, any remaining assets after payment of debts and liabilities must be distributed to another 501(c)(3) charitable organisation, or to the government or state for a public purpose (Musk v. Altman, 2024).

As a public charity, OpenAI Inc. *"must not be organized or operated for the benefit of private interests and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual"* (Exemption Requirements, 2024). However, a public charity is allowed to establish a for-profit subsidiary, such as an LLC, and can use this to for example protect it from liability or raise capital to scale the organisation beyond what would be possible if activities remained within the non-profit (Levitt & Chiodini, 2014). Accordingly, OpenAI has established several for-profit subsidiaries through which most research as well as commercial activities are conducted, with the most interesting ones in the context of this case being OpenAI LP, a limited partnership, and OpenAI Global LLC, a limited liability company, both of which are controlled by the non-profit OpenAI Inc., via an entity called OpenAI GP LLC.

4.2 OpenAI GP LLC

OpenAI GP LLC is a limited liability company formed in 2018 under Delaware law (Musk v. Altman, 2024, p. 13) and wholly owned and controlled by OpenAI Inc. (Our structure, 2019). OpenAI GP LLC is a so-called "disregarded entity" (Aprill, Loui, & Horwitz, 2024), meaning that for tax purposes the entity is treated not as a separate entity but taxed as part of the tax return for OpenAI Inc. (Single Member LLC, 2023). Because OpenAI LP is a limited partnership, it is controlled by a general partner which, unlike the limited partners, has unlimited financial liability. OpenAI GP LLC acts as that general partner (Aprill, Loui, & Horwitz, 2024) and provides OpenAI Inc. with control over OpenAI LP while also shielding it from liability. Meanwhile, OpenAI Global LLC is governed through an operating agreement, where OpenAI GP LLC acts as manager (Aprill, Loui, & Horwitz, 2024). The operating agreement does not ensure control, so control is secured by having OpenAI LP own 51% of the shares in OpenAI Global LLC, while being controlled by OpenAI GP LLC. As a result, OpenAI Inc. remains in control of all for-profit entities.

4.3 OpenAI LP and OpenAI Global LLC

OpenAI LP is a limited partnership formed in 2018 under the laws of Delaware (Musk v. Altman, 2024), established to be able to raise capital from investors and attract employees with equity incentives (OpenAI LP, 2019). When it was established, most of OpenAI's employees and activities were transferred to this entity. OpenAI LP is a for-profit company but with contractual limits to the returns that can be achieved on investments, resulting in what OpenAI argues is a hybrid of a for-profit and non-profit and refers to as a "capped-profit" company (OpenAI LP, 2019). That is, investors and employees can benefit from the value created by OpenAI by holding certain ownership rights in the for-profit entity. Ownership rights consist of essentially three elements: economic rights, control rights, and the right to sell. The three are most often bundled, but in the case of OpenAI, investors hold only economic rights, while the non-profit retains control and theoretically the right to sell. Furthermore, these economic rights are capped, meaning that when OpenAI turns a profit, this profit is returned to investors in the form of dividends until an agreed upon maximum return is reached, after which all residual value accrues to the OpenAI non-profit entity. This presumably implies that profits will not benefit the non-profit until investors have received their promised return, or only benefit to a limited extent. In addition, investors and employees can presumably also profit by selling their economic rights on secondary markets. For the first round of investors, returns were capped at 100x, a substantial but not unlimited return, and according to their official statement when the for-profit entity was announced, the cap would be lower in subsequent funding rounds (OpenAI LP, 2019). The cap is negotiated prior to an investment.

OpenAI Global LLC is a limited liability company formed in 2022 under Delaware law (Musk v. Altman, 2024). OpenAI Global LLC operates as a for-profit entity, and Microsoft has a minority ownership stake in it, but with capped returns as described in the previous paragraph. While it appears that most activities in the OpenAI sphere are conducted through OpenAI LP and OpenAI Global LLC, and OpenAI Inc. exists to simply control the for-profit activities and ensure that these align with the charitable mission, the exact operational relation between and purposes of OpenAI LP and OpenAI Global LLC remains somewhat unclear. However, information on OpenAI's website seems to indicate that for-profit activities are conducted through OpenAI Global LLC, while OpenAI LP has become a holding company for the economic interests of employees and investors other than Microsoft (Our structure, 2023).

Both OpenAI LP and OpenAI Global LLC are effectively subsidiaries of OpenAI Inc, controlled through OpenAI GP LLC, as described in section 4.2, and both are subject to the primacy of OpenAI's mission. In the case of OpenAI LP, this is encoded in the partnership agreement, which investors and employees have agreed to and are subject to. An excerpt from this can be found in appendix II. It clearly states that the for-profit exists to advance the mission of the non-profit, that the mission takes precedence over the need to generate a profit, that the company is under no obligation to ever become profitable, and is free to reinvest all cash flow into research and development. The operating agreement of OpenAI Global LLC (appendix II) contains similar content and furthermore expressly advises prospective investors that *"OpenAI Global, LLC is a high-risk investment"* and, quite unconventionally, that *"[i]t would be wise to view any investment in OpenAI Global, LLC in the spirit of a donation"* (Our structure, 2023).

4.4 Board of Directors

It is ultimately the board of the non-profit OpenAI Inc. that controls and governs all entities in OpenAI's ownership structure, including the activities at the for-profit entities.[3] Directors on this board appoints and removes themselves, meaning that theoretically they are neither appointed by, nor can they be fired by, any investors or other external stakeholders. The board holds a principal fiduciary duty to the mission of OpenAI (Our structure, 2023). That is, they have an obligation to first and foremost oversee and protect the development of safe AGI for the benefit of humanity. Thus, in their decision-making, the mission takes precedence over other interests stakeholders may have, including the need to generate a profit. In addition to guarding the mission, the board is also tasked with determining when AGI and thereby the mission of OpenAI has been achieved (Our structure, 2023).

To ensure that the board exercises its control rights independently and without influence of personal financial motives, the board must remain majority independent. Only a minority of board members are therefore allowed to hold a financial stake in OpenAI (Our structure, 2023), whereby a majority of board members are supposedly motivated not by financial incentives but by the act of contributing to the mission of OpenAI. When the for-profit subsidiary was established, it was announced that only board members without any personal financial interest

[3] For clarification, when this case mentions the board of directors or simply "the board", it refers to the board of the non-profit parent entity (OpenAI Inc.). It is assumed that neither OpenAI LP nor OpenAI Global LLC is mandated to establish a separate board of directors, and no publicly available information indicates that either entity has opted to do so.

could vote on decisions where the interests of actors with economic rights might be in conflict with the mission of OpenAI, including for example decisions regarding payouts to employees or investors (OpenAI LP, 2019). No available information exists regarding audit, compensation, nomination and governance, or other types of committees. According to the 2022 tax filings of OpenAI Inc., Directors did not receive any compensation directly related to their role on the board (appendix III). The board underwent certain changes in 2023, and whether Directors still receive no compensation is unclear, but examining previous tax filings, independent Directors have never received compensation, and executive directors generally have not, but have of course received compensation for their other obligations at OpenAI (Openai Inc - Tax Filings, n.d.).

When OpenAI was founded in 2015, the board consisted of just Elon Musk and Sam Altman who co-chaired (Brockman & Sutskever, 2015). Since then, several individuals have been added to and/or left the board until, in 2022, the board consisted of nine members, six of whom were non-executive Directors, and three of whom were OpenAI executives (appendix III). Moreover, six Directors were listed as independent (Form 990, 2022). Events during 2023 that will be further described in section 6, including most notably a week of turmoil in November that year, brought with it drastic changes to the governing body. Compared to the board that was in place at the beginning of 2023, all but one either left the board or were dismissed during that year, and as of this writing the reconstituted board consists of six voting members, five of whom appear to be independent, while the last member is the CEO of OpenAI (appendix IV). Microsoft, with a large investment in OpenAI Global LLC, has been added as a non-voting board observer (Sam Altman returns as CEO, 2023).

5. FROM NON-PROFIT TO FOR-PROFIT

To understand how OpenAI ended up with its current ownership structure, this section reviews the company's relatively brief history. The seeds for OpenAI were sown when Sam Altman contacted Elon Musk in 2015. The two shared a concern for the risk posed by AGI, considering the technology *"probably the greatest threat to the continued existence of humanity"* (Musk v. Altman, 2024, p. 5). They were worried that the technology would be developed with the wrong intentions, controlled by a single company, and used to benefit private interests rather than society at large. In particular, they were concerned about Google, whose DeepMind team had made promising advancements in AI development. As Elon Musk expressed it: *"Deepmind is causing me extreme mental stress. If they win, it will be really bad news with their one mind to* *rule the world philosophy."* (Musk v. Altman, 2024, p. 15). The solution became an independent research institution to serve as a counterbalance to Google in the race for AGI, where *"[t]he mission would be to create the first general AI and use it for individual empowerment"* (Musk v. Altman, 2024, p. 8), and there would be no obligations to maximise shareholder value. Safety would be a top priority, *"[t]he technology would be owned by the foundation and used 'for the good of the world"*(Musk v. Altman, 2024, p. 8), and would be open-sourced to the extent possible. Accordingly, OpenAI was established as a non-profit and relied solely on donations to fund its research. The company announced at its founding that a host of individuals and organisations would be committing a combined $1bn to the project, of which it expected to spend only a tiny fraction during the company's first years (Brockman & Sutskever, 2015). The initial list of funders included Elon Musk, Sam Altman, and Greg Brockman, as well as Reid Hoffman (venture capitalist and co-founder of LinkedIn), Jessica Livingston (co-founder and partner at Y Combinator), Peter Thiel (venture capitalist and co-founder of Paypal), and others.

5.1 Cost of development increases and largest donor leaves

By 2019 it had become *"increasingly clear that donations alone would not scale with the cost of computational power and talent required to push core research forward"* (Our structure, 2023). Billions of dollars were needed for investments into large-scale cloud compute, AI-supercomputers, and talent, and OpenAI therefore needed the ability to attract other sources of funding (OpenAI LP, 2019). The result became the capped-profit structure announced in March 2019, an attempt at attracting investors that seek a fair return, and attracting and retaining employees with startup-like equity incentives, while preserving the primacy of the mission and the non-profit oversight.

While the need for investors might have been inevitable, one event in particular appears to have somewhat exacerbated this: Elon Musk's departure and him putting a halt to his donations. According to their own website, OpenAI has received approximately $130.5M in total donations (Our structure, 2023), far from the promised $1bn. More troublesome, more than a third of this appears to have come from Elon Musk (Brockman et al., 2024), who left OpenAI's board of directors in early 2018 (OpenAI supporters, 2018). In addition, $30M has been donated by the foundation Open Philanthropy (OpenAI — General Support, 2017), and significant contributions have been made by Reid Hoffman (OpenAI supporters, 2018).

5.2 For-profit is established and Microsoft and others invest

When the for-profit was revealed, it was announced that *"investors include[d] Reid Hoffman's charitable foundation and Khosla Ventures, among others."* (OpenAI LP, 2019). Details of these investments are unknown. Few months after the for-profit was established, it was then revealed that Microsoft, with whom OpenAI had been collaborating since 2016, using Microsoft's cloud computing platform Azure for OpenAI's deep learning and AI experiments (Brockman, Sutskever, & Altman, 2016), was becoming an investor and strategic partner, contributing $1bn to the venture (Brockman, 2019). The partnership and contribution has since been expanded, first in 2021 and then with a *"multi-year, multi-billion dollar investment"* in 2023 (OpenAI and Microsoft extend partnership, 2023), allegedly bringing Microsofts total investment in OpenAI to $13bn (Bass & Nylen, 2023). Details of the agreement with Microsoft are somewhat unclear, and how Microsoft's investments are capped has not been confirmed. The initial 2019 investment is rumoured to be capped at 20x, while Forbes report that the 2023 investment of allegedly $10bn comes with a right to 75% of OpenAI's profits until the investment breaks even, after which Microsoft secures 49% of economic rights until an unknown agreed upon cap is reached (Bansal, 2023). Worth noting is that 1) the funding from Microsoft is divided into tranches and only a small part of it has so far been received by OpenAI, and 2) a significant portion of the funding from allegedly comes not in the form of cash but cloud computing credits for Microsoft's Azure (Albergotti, 2023).

In addition to the capital and cloud computing credits provided to OpenAI, the partnership includes Microsoft as the exclusive provider of cloud services to OpenAI. For clarification, cloud computing services are used across OpenAI's research, products, and API services. Furthermore, the partnership includes OpenAI supplying AI technology that can be integrated into Microsoft's consumer and enterprise products and support Microsoft in advancing its Azure platform (Microsoft and OpenAI extend partnership, 2023). While it has not been confirmed whether Microsoft's licensing rights to OpenAI's technology are exclusive, certain announcements indicate that this is indeed the case. Microsoft for example announced in 2020 that it was exclusively licensing OpenAI's GPT-3 language model, the precursor of the technology behind the current version of ChatGPT (Scott, 2020). Elon Musk has likewise hinted at this, for example in early 2023 when he tweeted that *"As part of their investment, Microsoft gained exclusive access to the entire OpenAI codebase"* (Elon Musk, 2023a).

The partnership means that Microsoft can financially benefit far beyond the agreed upon capped return, by capturing the additional value generated from for example integrating AI capabilities into its Bing search engine or its popular Office products and building out Azure's AI infrastructures. According to commentators, the partnership has positioned Microsoft well ahead of other tech giants in the AI race (Chafkin & Bass 2023), and the greatest return from Microsoft's partnership with OpenAI might therefore arguably come not from the financial value accruing from dividends or an appreciation in the value of OpenAI, but the technology developed by OpenAI which Microsoft has the usage rights to and can incorporate into its products. Worth noting though is that the agreement only applies to pre-AGI technology, and does not include IP licences and other commercial rights to AGI technology, if developed (Our structure, 2023), whereby the non-profit will remain entirely in control of the AGI technology.

Microsoft has made a point of clarifying that it does not have an ownership stake in the traditional sense, merely a "minority economic interest", stating that *"While details of our agreement remain confidential, it is important to note that Microsoft does not own any portion of OpenAI and is simply entitled to share of profit distributions"*. (Barts, 2023). According to some, in attempts to avoid regulatory scrutiny from antitrust authorities (Bass & Nylen, 2023). Nevertheless, regulators in both the United States and Europe are allegedly looking into partnership (Nylen, 2023).

In addition to Microsoft, Khosla Ventures, and Reid Hoffman, OpenAI states on its website that there is a *"Y Combinator investment fund that [has] made a small investment in OpenAI"* (Our structure, 2023). Apart from this, no information has been released that confirms who OpenAI's investors are, but after the initial funding round and a $300 million worth share sale in 2023, the list is rumoured to consist of several well-known venture capital firms, including Sequoia Capital, Andreessen Horowitz, Thrive Capital, K2 Global, and Founders Fund (Singh & Lunden, 2023).

5.3 Critique and concerns of mission drift

The introduction of the for-profit entity, the tightening relationship with Microsoft, and afterwards increasing commercial focus, has not gone unnoticed, and has been the subject of much criticism from observers. OpenAI has been accused of drifting away from its non-profit, mission-driven obligations, of acting more and more like a traditional tech company, and of neglecting AI safety concerns and commercialising advances before fully understanding the consequences. Moreover, OpenAI has been criticised for compromising on its openness commitments to protect its own and Microsoft's commercial interests. When OpenAI released its second and third generation models, GPT-2 and GPT-3, this was accompanied by papers describing the technology in detail and thereby enabling the community to develop similar models (Musk v. Altman, 2024). But with GPT-4, as of this writing OpenAI's most powerful publicly available AI-model, the internal design and code has been kept a secret. Elon Musk concisely summarised the concerns and critique when he blatantly tweeted that *"OpenAI was created as an open source (which is why I named it "Open" AI), non-profit company to serve as a counterweight to Google, but now it has become a closed source, maximum-profit company effectively controlled by Microsoft."* (Elon Musk, 2023b).

The concerns appear to have existed within OpenAI too, where there has been reported a clash between what appears to be two opposing cultures: a culture which emphasises research, openness, safety and broad distribution of wealth, and a *"Bay Area technologist culture interested in pushing cool ideas"* (Bansal, 2023). This may be the result of OpenAI being founded by a diverse group of people that included scientists, engineers, and entrepreneurs who might have different priorities concerning AI development. When OpenAI was just a non-profit conducting research and experimenting with deep learning, these cultures appear to have been able to coexist, but as the company has changed its ownership structure, and the opportunity for commercialisation and growth arose, there have allegedly been conflicting views on how to proceed and as a result increasing tensions between the two cultures. One group wants to progress slowly to prioritise safety, while another wants to scale and commercialise fast to beat competition. That is, should emphasis be on the mission or on growth. Most notably, it has been reported that Chief Scientist and now former board member Ilya Sutskever belongs to the culture of safety and broadly distributed benefits, while CEO Sam Altman has his roots and beliefs in the more classical move-fast-and-break-things tech culture (Miller, Stone, Ghaffary, & Vance, 2023). Tensions over safety concerns is allegedly also what led to two siblings, who served as VP of Research and VP of Safety and Policy at OpenAI, to leave OpenAI to found rival AI Startup Anthropic (Anthropic's CEO says why he quit his job at OpenAI, 2023). Reports have likewise suggested a dispute between Sam Altman and independent director Helen Toner, arising after the latter co-authored a paper that criticised the approach to AI safety at OpenAI (Metz, Mickle, & Issac, 2023b).

6. BOARDROOM CRISIS

6.1 CEO fired and Chairman removed

To much surprise for both employees at OpenAI, investors, and the tech community at large, a leadership transition was announced on Friday November 17th 2023 (OpenAI announces leadership transition, 2023). At noon the same day, CEO Sam Altman had been fired by the board of directors over a video call, and minutes later, Chairman of the board, Greg Brockman, had been informed that he had been removed from the board.

At the time, the board consisted of six members. The three executive directors Greg Brockman (Chairman), Ilya Sutskever, and CEO Sam Altman, and the three outside directors Adam D'Angelo (co-founder and CEO of Quora), Tasha McCauley (Senior Management Scientist at RAND Corporation), and Helen Toner (Director of Strategy and Foundational Research Grants at Georgetown's Center for Security and Emerging Technology). Sam Altman and Greg Brockman, however, had not been involved in the decision (Greg Brockman, 2023a). It might seem peculiar to not have all Directors, in particular the chairman, involved in the decision to fire the CEO, but potential explanations could be that 1) perhaps Sam Altman and Greg Brockman might have had a direct or indirect private financial interest in OpenAI and therefore could be excluded from certain board decisions, or 2) because the board consisted of just six people at the time, four would have been enough for a majority vote. According to the 2022 tax filings by OpenAI Inc., the board of directors had recently also included Reid Hoffman (who left the board to avoid a conflict of interest after co-founding rival AI startup Inflection AI and backing other AI startups), Will Hurd (an American politician who left the board to focus on his presidential campaign), and Shivon Zilis (Director of Operations and Special Projects at Elon Musk's Neuralink, who left the board for unknown reasons) (appendix III). With three directors leaving the board during the year prior to the ousting of Sam Altman, and for some reason not being replaced, the power had thus been concentrated among relatively few individuals. Appendix IV presents detailed information on all board members prior to, during, and after the ousting of Sam Altman.

According to official announcements, Sam Altman was fired because the board, following a review process, had concluded that he was not *"not consistently candid in his communications with the board, hindering its ability to exercise its responsibilities"*, wherefore the board *"no longer [had] confidence in his ability to continue leading OpenAI"* (OpenAI announces leadership transition, 2023). Because of the ambiguity of this announcement, and the lack of information about specific actions or inactions by Sam Altman that may have led to this conclusion, media and other commentators began speculating that the board's primary concern regarded the safe development of AI. Specifically, the fear that OpenAI was pushing development and commercialising its innovations too fast, without fully understanding the consequences of the technology and without having the proper safety mechanisms in place (Ludlow & Vance, 2023). In the year leading up to Sam Altman's departure, OpenAI had been ramping up commercial activities and significantly expanded its products and services offering, releasing new and more powerful AI models. Moreover, it was rumoured that ahead of the firing, researchers at OpenAI had warned the board of an AI development breakthrough in a project called Q* that could pose a threat to humanity (Tong, Dastin, Hu, 2023). Furthermore, it was speculated that Sam Altman had intentionally withheld or given inaccurate information to the board. However, with none of this verified by OpenAI, the primary reason why Sam Altman was fired may very well be the exact reason given by the official announcement from the board, that his lack of communication with the board made it difficult for the board to do its job of overseeing the company and guarding the mission. A comment on social media by Emmett Shear, who was temporarily appointed CEO during the events, somewhat supports this by claiming that tensions with commercial interests or safety concerns were not the cause of the firing: "*The board did *not* remove Sam over any specific disagreement on safety, their reasoning was completely different from that. I'm not crazy enough to take this job without board support for commercializing our awesome models.*" (Emmett Shear, 2023).

6.2 Pressure from stakeholders

The ousting of Sam Altman sent shockwaves through OpenAI and investors, most prominently Microsoft, who had neither been involved in nor informed of the decision to fire Sam Altman, and openly declared that they did not agree with it (Nieva, 2023). Greg Brockman, who had been removed as Chairman, resigned in protest (Greg Brockman, 2023b), as did three senior researchers (Victor & Efrati, 2023), including he who led the development of GPT-4, the technology behind the newest version of OpenAI's popular ChatGPT (Metz, Mickle, Isaac, 2023a).

The following days, efforts were allegedly made by both leading employees and current or prospective investors to reinstate Sam Altman as CEO and have the board removed. Microsoft CEO Satya Nadella along with representatives from Khosla Ventures and rumoured investors such as Thrive Capital and Tiger Global Management are said to have been negotiating behind the scenes for Altmans return (Bass, Chang, & Vance, 2023), presumably to safeguard their interests in the venture. However, initial attempts at having Sam Altman reinstated were unsuccessful, and Emmett Shear, former CEO of the video streaming site Twitch and a long term advocate for prioritising safety concerns in the development of AI, was instead announced as the new CEO of OpenAI (Dastin et al., 2023). Not long after, Microsoft announced that Sam Altman and Greg Brockman, along with other colleagues from OpenAI, would be joining Microsoft to lead a new advanced AI research team (Satya Nadella, 2023).

Furthermore, almost all of OpenAI's 770 employees signed a letter threatening to quit if Sam Altman was not reinstated and the board replaced, apparently with the assurance that Microsoft would welcome them if they were to leave OpenAI (Vance, Ludlow, & Savov, 2023). Interestingly, executive director Ilya Sutskever, who had been involved in the ousting of Sam Altman, also signed the employee letter (Levine, 2023b) and, the morning after Microsoft announced that they would be hiring Sam Altman, publicly stated that he regretted his participation in the boards actions, and would do everything he could to reunite the company (Ilya Sutskever, 2023).

Some investors were allegedly considering writing down the value of their holdings in OpenAI to zero (Vance, Ludlow, & Savov, 2023), and some were exploring their options for suing the board (Thong, Hu, & Godoy, 2023). Moreover, the tender offer mentioned in section 3.1 that would allow existing investors and current and former employees with an equity stake in OpenAI to sell their shares at an $80bn valuation, triple OpenAI's valuation before that, appeared in jeopardy (Clark, Holmes, & Victor, 2023). In addition, Helen Toner was allegedly warned that the board could face claims for breaching their fiduciary duties to investors, if the decision to fire Sam Altman would lead to OpenAI failing (Musk v. Altman, 2024, p. 23). However, given that all publicly available information from OpenAI indicates that obligations to the Charter and the mission always takes precedence over the interests of investors, *"even at the expense of some or all of their financial stake"* (OpenAI LP, 2019), it's doubtful whether such claims would fare well.

6.3 CEO returns and board is replaced

The board eventually had to surrender to the mounting pressure from various stakeholders, presumably especially the prospect of losing almost all employees to Microsoft, and on Wednesday the 22nd of November Sam Altman was reinstated as CEO. Furthermore, a new initial board was formed consisting of Adam D'Angelo, Larry Summers (professor at Harvard University, President Emeritus at Harvard, and former U.S. Secretary of the Treasury), and the new Chairman Bret Taylor (former co-CEO at Salesforce and Chairman of the board at Twitter) (We have reached an agreement, 2023). The two new board members were allegedly approved by Sam Altman and Microsoft (Musk v. Altman, 2024, p. 8). Three out of four board members that had ousted Sam Altman had thus been removed. Ilya Sutskever, however, while no longer part of the board, appears to be continuing his work at OpenAI (Sam Altman returns as CEO, 2023). Greg Brockman, as well as the three high-profile researchers that quit OpenAI the same day Sam Altman was fired, also returned to the company, with Sam Altman stating that *"Greg* *and I are partners in running this company. We have never quite figured out how to communicate that on the org chart, but we will"*, thus seemingly placing Greg Brockman in a position of co-leading the company (Sam Altman returns as CEO, 2023). Why Adam D'Angelo was the only board member to survive the events we do not know, though some speculate it was because of his high profile within the tech community.

The directing-principle, guiding governance at OpenAI, remains the mission of building safe AGI that benefits humanity, and following his return, Sam Altman announced as immediate priorities the task of *"Advancing our research plan and further investing in our full-stack safety efforts"*, the task of *"Continuing to improve and deploy our products and serve our customers"* and the need for strengthening the corporate governance to ensure that *"everyone can be confident in the stability of OpenAI"* (Sam Altman returns as CEO, 2023). For the three members of the reconstituted board, the tasks as announced by the new Chairman were to first fill the vacant seats at the board with experienced individuals representing a diverse set of perspectives and relevant capabilities within areas such as technology, safety, and policy. Second, to stabilise the OpenAI organisation, including having an independent board member conduct a review of recent events. Third, to improve the governance structure at OpenAI to re-establish stakeholder trust in the organisation (Sam Altman returns as CEO, 2023). By March 8, 2024, some of these tasks had been completed. Following a review of the November 2023 events by the law firm WilmerHale, a 'Special Committee' of the OpenAI board expressed its full confidence in Sam Altman's ability to continue leading OpenAI, and he rejoined the board of directors (Review completed, 2024). The report by WilmerHale concluded that the decision to fire Sam Altman *"was a consequence of a breakdown in the relationship and loss of trust between the prior Board and Mr. Altman"* and that *"the prior Board acted within its broad discretion to terminate Mr. Altman, but also found that his conduct did not mandate removal"* (Review completed, 2024). Moreover, three additional Directors were announced in the form of Dr. Sue Desmond-Hellmann (Board member at Pfizer and former CEO of the Bill and Melinda Gates Foundation), Nicole Seligman (Board member at Paramount and former EVP at Sony), and Fidji Simo (Board member at Shopify and CEO and Chair of Instacart) (OpenAI announces new members to board of directors). Finally, the board announced several governance enhancements. Most notably, the creation of additional Board committees, adoption of a new set of corporate governance guidelines, and strengthening of OpenAI's Conflict of Interest Policy. However, it has not specified what these changes will entail, except that it will include *"a Mission & Strategy committee focused on implementation and advancement of the core mission of OpenAI"* (Review completed, 2024).

Table 2: *Board of directors before, during, and after the boardroom crisis*

Board	**Directors**
Board at the beginning of 2022	Greg Brockman (Chair), Ilya Sutskever, Sam Altman, Adam D'Angelo, Tasha McCauley, Helen Toner, Reid Hoffman, Shivon Zilis, Will Hurd
Board that fired Sam Altman	Greg Brockman (Chair), Ilya Sutskever, Sam Altman, Adam D'Angelo, Tasha McCauley, Helen Toner
Board after November 2023	Bret Taylor (Chair), Larry Summers, Adam D'Angelo
Board after March 2024	Bret Taylor (Chair), Larry Summers, Adam D'Angelo, Dr. Sue Desmond-Hellmann, Nicole Seligman, Fidji Simo, Sam Altman

Although Microsoft formally has no say in the matter, its CEO also made it clear during the events that it expected governance changes, further stating that *"one thing I'll be very, very clear is we're never going to get back into a situation where we get surprised like this ever again"* (Swisher, 2023). In particular, the company wanted stability and to ensure that it would never again be caught off guard by sudden major changes. This could presumably mean some form of control or just increased transparency and information sharing between the board and Microsoft. As argued by some, an important consideration for Microsoft was that increased control could lead to regulatory scrutiny (Bass, 2023). The result appears to have been that, as previously mentioned, Microsoft has been invited into the boardroom of OpenAI, but as a non-voting board observer and thus still with no formal control.

6.4 OpenAI sued for abandoning mission

The ever-eccentric Elon Musk who, as described in section 5.3, has been critical of recent years developments at OpenAI and especially the influence of Microsoft, has done more than just express his opinion on this matter. On February 29th, 2024 he filed a case against all OpenAI affiliated entities as well as Sam Altman and Greg Brockman personally for breaching the founding agreement (Musk v. Altman, 2024). Specifically, Elon Musk and his lawyers argue that *"OpenAI has abandoned its "irrevocable" non-profit mission in the pursuit of profit"* (Musk v. Altman, 2024, p. 26). They have therefore filed the case *"to compel OpenAI to adhere to the Founding Agreement and return to its mission to develop AGI for the benefit of humanity"* (Musk v. Altman, 2024, p. 9). Musk and his lawyers furthermore argue that the events in November 2023, which they refer to as a "Board coup", *"constitute flagrant breaches* *of the Founding Agreement, which Defendants have essentially turned on its head."* (Musk v. Altman, 2024, p. 8).

Central to their case are allegations regarding the partnership with Microsoft, and the influence the tech giant exerts over OpenAI. Musk and his lawyers argue that because of Microsoft's exclusive access to OpenAI's technology, and OpenAI's dependency on Microsoft for access to capital and cloud compute, *"OpenAI, Inc. has been transformed into a closed-source de facto subsidiary of the largest technology company in the world: Microsoft."* (Musk v. Altman, 2024, p. 8), essentially developing technology to maximise profits for Microsoft rather than to benefit humanity as promised by the mission and the founding agreement. Moreover, Musk and his lawyer argue that OpenAI has abandoned its commitments to openness and transparency *"for propriety commercial reasons"* (Musk v. Altman, 2024, p. 29), for example failing to publicly disclose details on its GPT-4 technology, and that this has been done to safeguard the economic interests of Microsoft which would be negatively affected if OpenAI's technology, as originally intended, was made freely available to the public.

Musk and his lawyers further argue that *"the new Board members were hand-picked by Mr. Altman and blessed by Microsoft."* (Musk v. Altman, 2024, p. 8), and express concerns that the new board members *"lack substantial AI expertise"* (Musk v. Altman, 2024, p. 8) and therefore are ill equipped to determine when AGI has been achieved. This is important, because the agreement with Microsoft only applies to pre-AGI technology, meaning that it is up to the board to decide when OpenAI's technology has become so advanced that Microsoft no longer can have access to it. The board therefore needs to be qualified to determine when OpenAI's technology falls outside the scope of the exclusive licence and not be influenced to delay this for the benefit of Microsoft. They furthermore critique the decision to grant Microsoft a seat as a non-voting board observer, arguing that this enables it to *"exert undue influence and control over OpenAI's non-profit activities"* (Musk v. Altman, 2024, p. 29), including the decision of when OpenAI has attained AGI.

The case is important, Musk and his lawyers argue, because Musk has willingly made significant contributions to OpenAI, in the form of both donations in the tens of millions and time over a period of years, to help get a mission-driven non-profit off the ground, *"on the condition that OpenAI would remain a non-profit irrevocably dedicated to creating safe, open-source AGI for public benefit, only to then have OpenAI abandon its "irrevocable" nonprofit mission, stop providing basic information to the public, and instead exclusively dedicate and license its AGI algorithms to the largest for-profit company in the world"* (Musk v. Altman, 2024, p. 30). This, they argue, is the exact opposite of what Elon Musk allegedly agreed to and *"a stark betrayal of the Founding Agreement"* (Musk v. Altman, 2024, p. 27), making Elon Musk, to use his own words from 2017 when the possibility of turning OpenAI into a for-profit was allegedly being discussed *"a fool who is essentially providing free funding to a startup"* (Musk v. Altman, 2024, p. 15).

Musk and his lawyers point to the fundamental question of whether resources that have been donated to a non-profit, with the expectation of being used only for explicitly non-profit purposes can be transferred to or used for for-profit activities. Furthermore, since being a non-profit comes with certain tax privileges, they argue that if the OpenAI model is valid, it would radically affect how venture capitalism is being practised. Investors would be able to establish a non-profit and use pre-tax donations to fund research activities, only to transfer the intellectual property to a for-profit entity and *"enrich themselves and their profit-maximizing corporate partners"* (Musk v. Altman, 2024, p. 25). Further elaborating that for every dollar contributed to a non-profit, an investor will get roughly 50 cents back in the form of reduced income taxes. That is, the net cost of investing 1 dollar will be only 50 cents. Meanwhile, using the OpenAI model as precedence, the upside will be the same upside as if the investment had been made in a conventional for-profit entity with no immediate tax write off (Musk v. Altman, 2024). Investors would thus be incentivised to follow the OpenAI example.

Sam Altman, Greg Brockman and other leading figures at OpenAI have announced that they will move to dismiss all accusations made by Elon Musk and stated that they *"are dedicated to the OpenAI mission and have pursued it every step of the way"* (Brockman at al., 2024), advancing towards this by *"building widely-available beneficial tools"* (Brockman at al., 2024). Further arguing that Elon Musk fully understood that the mission did not require open-sourcing AGI technology, and was well-aware that the amount of capital needed to build AGI meant that OpenAI would never be able to succeed with their mission if they had to rely on donations alone, and that establishing a for-profit entity therefore was necessary. In addition, they accuse Elon Musk of *"wanting majority equity, initial board control, and to be CEO"* or alternatively to simply merge OpenAI with Tesla, when a for-profit pivot was first discussed. Essentially, Elon Musk did not want to protect the charitable mission, he wanted control, they argue. Furthermore, that no agreement could be reached because Sam Altman, Greg Brockman, Ilya Sutskever, and others *"felt it was against the mission for any individual to have absolute control over OpenAI"* (Brockman at al., 2024), a disagreement they argue led to Elon Musk parting ways with OpenAI. Finally, they express regrets that Elon Musk, someone they used to admire, sued them when they *"started making meaningful progress towards OpenAI's mission without him"* (Brockman at al., 2024).

7. DISCUSSION

The ownership structure at OpenAI resembles that of an enterprise foundation. A self-owning and self-governing non-profit controlling a for-profit company. The non-profit is governed by charter and overseen by a majority independent board of directors, it exists to pursue a non-selfish purpose, the purpose is defined by the founders and written into the charter, the initial capital has been provided via irrevocable donations, and it is independent of its founders. At first glance, this foundation-like structure has worked incredibly well for OpenAI, where the progress in the research and development of AI and the growth in revenue and valuation has undeniably been impressive. However, the governance turmoil in November 2023 demonstrates that challenges exist. Most notably, inherent tensions between the mission and stakeholders with conflicting interests, in particular OpenAI’s largest financial contributor Microsoft, and a board which, as the ultimate governing body and guardian of the mission, has not been able to withstand the pressure from these stakeholders. This indicates that although OpenAI can be considered a commercial success, its governance structure has arguably failed, because it has not succeeded in facilitating one of the primary objectives as defined when the first for-profit subsidiary was established: to raise capital while remaining independent of shareholder control.

7.1 Interests of key stakeholders in tension with the mission

OpenAI’s structure has built in tensions between the non-profit mission and for-profit interests. The capped-profit entity was established to enable OpenAI to raise capital from investors with an expectation of a certain, capped return, inevitably giving them a financial interest in the company, not simply viewing their investments “in the spirit of a donation” as otherwise suggested by for-profits operating agreement (Our structure, 2023). In addition, it would allow for attracting and retaining talent with equity incentives, whereby employees' motivation becomes tied to the financial wellbeing of the company, which might affect their behaviour and decision-making. That is, it might be difficult for employees to prioritise the mission over commercial success if their private wealth depends on the latter, which can undermine the mission's role as a guiding principle. Two key stakeholders thereby likely have an interest in commercialisation, a focus on growth and profitability, and operating more like a traditional tech company than a mission-driven non-profit. In contrast, the mission of OpenAI places emphasis on research and development of safe and responsible AI, which might not align with uncontrolled growth but instead, as suggested by some, require slow and controlled development. Moreover, the charter emphasises a cooperative orientation and broadly distributed benefits, whereas Microsoft likely has an interest in preventing the public from accessing information about the technology, to, quite naturally, maximise the value they themselves can capture from it.

Competitive pressures might be exacerbating the tensions and, in particular, complicating the task of balancing commercial interests and the speed of development with safety concerns. The potential of AI has caught widespread attention. Rivalling AI startups have emerged and are attracting capital and talent, which pressures OpenAI to rapidly develop and release products to stay relevant, potentially faster than responsibility and safety concerns ideally would allow for. Moreover, tech giants are investing massively in gaining a foothold, which threatens the competitive edge Microsoft has gained in AI because of its access to OpenAI's technology, and incentivises it to push for faster technological advancements at OpenAI that can be incorporated into Microsoft's products. For example, Amazon has recently announced it will be investing up to $4bn in rival AI startup Anthropic (Dastin, 2023). Similarly, Google-owner Alphabet has allegedly agreed to invest up to $2bn in Anthropic (Hu, 2023b), has announced it will be accelerating its internal AI efforts in its Google DeepMind division (Hassabis, 2023), and has introduced its Gemini AI model (Pichai & Hassabis), a competitor to OpenAI's ChatGPT. To provide an indication of the magnitude of investments in AI by other Tech giants, Meta recently announced that it expects its capital expenditures in 2024 to exceed $30bn, with the largest portion of this going into AI (Cohan, 2024). All of this means that although OpenAI's charter explicitly emphasises concerns about a competitive AI race, OpenAI might currently be in the midst of exactly such race, and it raises further concerns about the company's ability to stay committed to its mission of ensuring safe AGI that benefits humanity and not neglect this nobel purpose in the pursuit of commercial and financial interests.

The clash of cultures within the organisation (see section 5.3) might also add to the complexity. Extending into the boardroom, different perspectives have existed on how to prioritise. Whether to, in line with the mission, progress slowly to prioritise safety, or commercialise and scale fast to beat competition. With Sam Altman allegedly endorsing the latter perspective, while others, such as Ilya Sutskever and Helen Toner, have remained devoted to the mission. At the centre of the boardroom clash might therefore also have been tensions from a clash of internal cultures. Worth noting is that the return of Sam Altman could be viewed as a sign that commercial voices within OpenAI have triumphed, and create concerns that it could drive some mission-devoted and safety-concerned employees away from the company.

However, with almost all employees allegedly signing the letter that demanded the return of Sam Altman, this does not appear to be a problem, and further begs the question if internal culture really is as polarised as some commentators have suggested.

7.2 The board not in control

Because a foundation is self-owning, the ultimate decision-making authority is the board of directors. This is also the case at OpenAI, where it is the board of the non-profit that holds the rights to exercise control over the for-profit entities, but the outcome of the November 2023 turmoil casts doubts as to who really holds the control at OpenAI. Specifically, if the company has become so reliant on Sam Altman, employees, and investors, in particular Microsoft, that these hold enough informal power to effectively control OpenAI, thereby undermining the governance system.

What ended the governance crisis appears to have been especially the pressure from employees threatening to leave the company for Microsoft if the board did not reappoint Sam Altman as CEO and then resign. As a technology-intensive startup, one of OpenAI's most valuable assets, in addition to its intellectual property, might very well be its human capital. It relies on talented employees with advanced technical knowledge who, as opposed to tangible assets, can always decide to walk away. OpenAI is thus particularly vulnerable to the threat of employees leaving, giving employees significant leverage. As CTO of OpenAI Mira Murati noted, *"OpenAI is nothing without its people"* (Mira Murati, 2023).

OpenAI's dependency on Microsoft likewise brings into question the effectiveness of the formal power of the board. Although Microsoft, as argued by the tech behemoth itself, does not have ownership rights in the traditional sense (Barts, 2023), merely a "minority economic interest" (Our structure), and no formal control rights, it appears to hold considerable informal power. Without the capital and cloud computing power provided by Microsoft OpenAI will not be able to fund its increasingly expensive activities and train and run its AI models. Moreover, Microsoft holds exclusive rights to OpenAI's technology. This dependency appears to have given Microsoft significant leverage in the relationship and brought the board of OpenAI in a position where it will no longer be able to govern without ensuring that decisions align with the interests of Microsoft. The CEO of Microsoft, Satya Nadella, expressed this eloquently when he, the day before Sam Altman returned as CEO of OpenAI, stated that *"there is no OpenAI without sort of Microsoft leaning in in a deep way to partner with this company on their mission."* (Swisher, 2023). The November 2023 events appear to have only strengthened Microsoft's position and influence. Having a seat on the board of the non-profit, albeit as a non-voting board observer, and allegedly having approved some of the new board members (Musk v. Altman, 2024), further increases Microsoft's ability to influence the agenda at OpenAI and, importantly, as argued by Elon Musk and his lawyers, influence the decision of when the technology developed at OpenAI can be considered AGI and thereby falls outside the scope of Microsoft licensing agreement.

It could be argued that the OpenAI-Microsoft relation is one of mutual reliance in that OpenAI cannot survive without the continued support of Microsoft, while Microsoft relies on the technology developed by OpenAI to secure their competitive position in an environment where tech giants and startups alike are placing high bets on winning the AI race. As the case shows however, it did not take long for Microsoft to hire leading figures at OpenAI and offer the rest of the employees positions at Microsoft in case they wanted to jump ship. Furthermore, as expressed by Satya Nadella during the OpenAI turmoil, likely in an attempt to calm investors, analysts, and others who might worry about the effect it could have on Microsoft's AI efforts, Microsoft has *"all the IP rights and all the capability"* (Swisher, 2023) and thereby the ability to continue innovating without OpenAI. Thus, should OpenAI cease to exist this would likely not be more than a minor setback in Microsoft's AI efforts, appearing capable of effectively reconstituting OpenAI within Microsoft if necessary. As Satya Nadella once again summarised it, *"we have the people, we have the compute, we have the data, we have everything"* (Swisher, 2023). The situation suggests that it was not necessary for Microsoft to own a majority stake or have control rights in OpenAI in order to control it.

The support of employees who will rather follow him to Microsoft than remain at OpenAI under new leadership, and investors who have put their faith and capital in him, appears to have also granted Sam Altman enough informal power that it might be difficult for the board to challenge him. Even more so, now that he is back on the board, seemingly violating the principle of maintaining 'managerial distance', and raising concerns about the new board's ability to provide proper checks and balance on the CEO and fulfil its fiduciary duty to the mission.

7.3 Was firing Sam Altman the right decision?

That the board had the right to fire Sam Altman, but was firing Sam Altman the right decision? Both during and following the five days of turmoil this was an often discussed topic. Some commentators emphasised the commercial potential of OpenAI and accused the board of acting recklessly and jeopardising the survival of the company by firing a well-regarded CEO, calling it a boardroom coup and attacking the ownership structure for not acknowledging the interests of investors. However, satisfying investors and protecting commercial potential has never been an objective for OpenAI. The company's mission is to ensure development of safe AI for the benefit of humanity, the role of the board to guard the mission, and the role of the CEO to guide the company towards this mission. The board therefore had an obligation to fire the CEO if they did not trust him with this responsibility, as suggested by some sources (see section 6.1), or if his lack of communication made it impossible for the board to carry its task of overseeing OpenAI, as suggested by official announcements from the company. The mission always takes primacy at OpenAI, and the company has always been keenly clear on this. Following this logic, it is problematic that the board was not successful in its attempt to fire a CEO it did not trust, essentially not being able to carry out its fiduciary duty, because it had to succumb to pressure from employees and investors.

More justifiable concerns and critique might be whether the board was sufficiently qualified to determine if Sam Altman's misconduct mandated removal, and whether removing him was in the best interest of the mission. In particular, the board seemingly failed to anticipate and prepare for the ramifications of firing Sam Altman. The rationale being that if the board's task is to guard the mission of safe development of AGI for the benefit of humanity, their actions had the opposite effect, because they were jeopardising the survival of OpenAI. Even if mission-drift and safety concerns would loom so large that OpenAI should halt the development of AI, the development of AI among other tech companies had already become so intense that OpenAI would never be able to stop this, merely help guide it. That is, closing OpenAI would not relieve the world of AGI safety concerns, it would just mean the loss of an institution attempting to guard the development of safe and beneficial AGI. Furthermore, it would leave Sam Altman and others free to join Microsoft where no mission obligations exist.

7.4 Critique of board composition

Having a board that governs without any owners to provide checks and balances puts even greater responsibility on this group of individuals, which must be both diligent and competent, possessing relevant, balanced, and complementary skills. Following the November 2023 events however, the board at OpenAI was severely criticised for several reasons, most notably for being too inexperienced and lacking certain relevant competencies.

The board had seen three independent directors leave during the year leading up to the crisis, neither of whom had been replaced. With only six directors remaining, two of whom could apparently be excluded from certain decisions, some commentators therefore also argued that power had become concentrated in the hands of too few individuals. However, as

Hansmann & Thomsen (2013) found, a board of this size is not atypical for a foundation, and in Denmark for example the board of a typical enterprise foundation consists of just six members. The three vacant board seats do, however, bring into question whether the board, which is self-regulating, hence removes and appoints itself, has proper succession processes in place. Moreover, the remaining Directors did not have much experience as board members or executives of similar organisations, and their expertise arguably lay in overseeing development of AI technology rather than overseeing commercial operations. This brought into question whether OpenAI had managed to create a board with the right balance of the competencies in both running a business and advancing the mission. The most sacred task of the board at OpenAI is to guard the mission of safe development of AGI, but as the crisis has shown, a principal role of the board may be to strike proper balance between commercial interests and the mission. Accordingly, some critiqued the board composition and argued that whereas the board might have had relevant competencies to govern a research institution developing new technology, they were no longer sufficiently qualified when this scaled into a commercial venture, because of their singular focus on the non-profit side. Furthermore, it has been suggested that the board did not carry enough weight and experience to handle a powerful CEO and withstand potential pressure from investors. In contrast, one of the Directors who had recently left was Reid Hoffman, an authority within the tech community and experienced board member and executive, while another was Will Hurd, a former congressman (appendix IV).

Time will tell if the new board will be better at balancing tensions between mission and profit. The addition of heavy-hitters such as Bret Taylor and Larry Summers (appendix IV) arguably brings more experience in overseeing commercial ventures and engaging with investors. However, a concern could be that they have been appointed with an expectation of being more attuned to the interests of Microsoft, and that the focus of the board will tilt towards commercial and financial interests to the extent where the mission becomes neglected. Another concern could be whether the new board has sufficient expertise in AI ethics and governance. If not, they could for example be incapable of determining when OpenAI has achieved its mission of building AGI, and the technology thereby falls outside the scope of Microsoft's licence. A question is also whether OpenAI could benefit from having a separate board for its for-profit subsidiaries. Control would remain with the board of the non-profit, where Directors with mission-relevant competencies could be prioritised, while the board of the for-profit could consist of Directors with conventional business-relevant capabilities. Moreover, this could ensure a higher level of managerial distance.

7.5 Mission-lock and control imperative limits flexibility

While the mission-lock and control imperative can ensure the stability and focus necessary for longtermism to flourish, it also constrains the types of activities a foundation-owned company can engage in and limits the possibilities for raising new capital. The benefits of foundation ownership are therefore traditionally most likely to materialise in large and well-established companies that are operating in relatively stable environments and can afford to be risk-averse and take a long-term view. As argued by Thomsen (2017), the company must have *"achieved a certain minimum size and level of prosperity."* (p. 38). Indeed, many of the successful enterprise foundations found today were already large, established enterprises when the foundation governance structure was adopted. OpenAI in contrast is a newly established, fast-growing company, operating in an uncertain, complex, and highly competitive environment, without the luxury of being able to plan for the future, until recently also without any significant or stable revenue stream, and potentially with the need for additional and significant capital injections to support its expensive development activities. Thus, the conditions for longtermism to materialise appear mostly absent. OpenAI could instead have a need for flexibility and not being constrained by a mission-lock and control imperative that severely complicates the task of balancing the rising tensions between mission and profit.

8. KEY LEARNINGS

Intentions at OpenAI have been good. First, establishing a public charity in the attempt to develop safe AI for the benefit of humanity, protected from the need to generate a financial return. Next, when the need for raising capital from investors and attracting talent with equity-like incentives became apparent, attempting to develop an ownership structure that would allow for this; establishing a for-profit entity in which investors and employees could obtain certain economic rights, while the self-owning and self-governing non-profit with its noble mission remained in control. A structure that resembles that of an enterprise foundation. However, while the commercial success of OpenAI is indisputable, the turmoil in November 2023 shows that its governance might not be working as intended.

By having a contractual claim on a portion of the profits, OpenAI's employees and investors naturally have commercial and financial interests. This need not be a problem, as shown by numerous successful publicly traded but foundation-owned companies. Yet at OpenAI it created challenges for the board, because the interests of those key stakeholders, motivated by the extreme commercial potential of the company, increasingly appeared in conflict with the mission the board was tasked with protecting, and because the same stakeholders held substantial coercive power over the board. This became clear when the board tried to fire the CEO, but instead had to resign after pressure from employees and investors, in particular Microsoft. Thus, while OpenAI's structure was intentionally designed to withstand pressure from investors and others with interests that could conflict with the mission, it ended up in exactly such a scenario. A peculiar example of foundation-like ownership, where formal control is held by the board of the non-profit, but de facto control resides outside the "foundation", most notably in the hands of its largest investor, Microsoft.

Bearing in mind that we do not know what the results and effects of the recently filed lawsuit against OpenAI and Sam Altman will be, observers can still deduct several lessons from the OpenAI case. The first being that *formal control does not necessarily equate to actual control*. The board had the right to fire Sam Altman, perhaps even the obligation to do so, but how the events unfolded afterwards show that they were not in control of the situation. The reason being that they effectively did not control OpenAI's two most valuable assets: its employees and its technology. Most employees turned out to be loyal to Sam Altman rather than the company, and prepared to leave if he was not reinstated, providing the important lesson for firms relying on highly skilled labour while possessing few physical assets, such as many tech companies, that this grants employees' significant leverage. Meanwhile, Microsoft to a large extent controls the technology by providing the capital and infrastructure necessary to develop and run OpenAI's models and having exclusive licensing rights to the IP, creating a dependency which means that although formally the board of OpenAI is not accountable to Microsoft, it would appear that informally it is. Here is a lesson for non-profits and for-profits alike in the risk of becoming overly dependent on one single stakeholder.

The case also reaffirms the importance of preserving key stakeholders' support and trust in the board. When OpenAI's board fired Sam Altman, it harmed the trustful relations to employees and investors, and the board's lack of openness and transparency about its decision only exacerbated the situation. Trust requires that stakeholders feel informed and included, and the stakeholders at OpenAI did not. Thus, although OpenAI's board was not necessarily wrong to fire Sam Altman — they had a fiduciary duty to the mission, thus arguably did exactly what they had been tasked with, guarding the mission to the best of their ability — they should arguably have anticipated and better prepared for the reactions, been more transparent about the reasoning behind their decision, and attentive to the concerns of key stakeholders. Moreover, securing the continued support of stakeholders on which the company relies, a necessity to fulfil the mission, requires that their interests are sufficiently accommodated. In the end, strictly prioritising the mission and somewhat neglecting tensions that exist between the mission and stakeholders on which the company relies, might have done more harm than good to the mission, driving a wedge between the non-profit and the for-profit, and making the two appear almost in competition rather than partners in pursuing the mission. The for-profit exists to fund the mission, and operates at the discretion of the non-profit, but the mission might not be attainable without the for-profit, hence commercialising, scaling, and generating profit might be a necessary means to an end. Thus, although the most sacred duty of the board at OpenAI is to guard the mission of safe development of AGI, a principal task might be to *properly balance tensions that exist between stakeholders and the charitable mission*. This task of balancing mission and money, which is relevant not just to enterprise foundations, but also to conventional for-profits that increasingly choose to adopt a purpose beyond profit, requires a diverse set of capabilities and highlights the importance of having the right board composition. That is always essential, but even more so in a foundation where the board's actions theoretically go unchecked. The fact that the board's decision was reversed naturally also raises the question, what if the initial decision was, in fact, in the best interest of the mission? Disregarding whether or not that might be the case, it exposes what is arguably an Achilles heel of foundation ownership. The foundation board is tasked with protecting the mission, but what if they are not able to, or deliberately choose not to? As the Roman poet Juvenal famously asked: *"Who is to guard the guardians?"* (Thomsen & Conyon, 2019, p. 23). In the case of OpenAI, the answer to that question might be: no one.

As a final takeaway, the case suggests that although foundation-like ownership can work well, as demonstrated by several successful foundation-owned companies, this might not be the case for all types of firms. Because of the mission-lock and imperative to maintain control, a foundation-owned company is limited in its ability to raise capital from for example equity markets and theoretically prohibited from pursuing activities outside the scope of the mission. For a well-established and financially stable company this can protect it from myopic investors and provide a focus that can enable longtermism to materialise and the company to prosper, but for a capital-intensive startup the lack of flexibility can be disadvantageous. OpenAI attempted to work its way around the control versus capital challenge, but ended up with a dependency on Microsoft that caused the board to lose control. In large part, because OpenAI is an extreme case, where the cost of operating and running AI models creates immense capital requirements. A final lesson can thus be drawn: *foundation-like ownership might not be a good fit for a startup like OpenAI in need of significant investments.*

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APPENDIX I: PRINCIPLES IN OPENAI'S CHARTER

Principle	Description
Broadly distributed benefits	We commit to use any influence we obtain over AGI's deployment to ensure it is used for the benefit of all, and to avoid enabling uses of AI or AGI that harm humanity or unduly concentrate power. Our primary fiduciary duty is to humanity. We anticipate needing to marshal substantial resources to fulfill our mission, but will always diligently act to minimize conflicts of interest among our employees and stakeholders that could compromise broad benefit.
Long-term safety	We are committed to doing the research required to make AGI safe, and to driving the broad adoption of such research across the AI community. We are concerned about late-stage AGI development becoming a competitive race without time for adequate safety precautions. Therefore, if a value-aligned, safety-conscious project comes close to building AGI before we do, we commit to stop competing with and start assisting this project. We will work out specifics in case-by-case agreements, but a typical triggering condition might be "a better-than-even chance of success in the next two years."
Technical leadership	To be effective at addressing AGI's impact on society, OpenAI must be on the cutting edge of AI capabilities—policy and safety advocacy alone would be insufficient. We believe that AI will have broad societal impact before AGI, and we'll strive to lead in those areas that are directly aligned with our mission and expertise.
Cooperative orientation	We will actively cooperate with other research and policy institutions; we seek to create a global community working together to address AGI's global challenges. We are committed to providing public goods that help society navigate the path to AGI. Today this includes publishing most of our AI research, but we expect that safety and security concerns will reduce our traditional publishing in the future, while increasing the importance of sharing safety, policy, and standards research.

Source: https://openai.com/charter

APPENDIX II: PARTNERSHIP AND OPERATING AGREEMENTS

OpenAI LP Partnership Agreement

IMPORTANT

The Partnership exists to advance OpenAI Inc's mission of ensuring that safe artificial general intelligence is developed and benefits all of humanity. The General Partner's duty to this mission and the principles advanced in the OpenAI Inc Charter take precedence over any obligation to generate a profit. The Partnership may never make a profit, and the General Partner is under no obligation to do so. The General Partner is free to re-invest any or all of the Operating Entity's (or the Partnership's) cash flow into research and development activities and/or related expenses without any obligation to the Limited Partners. See Section 6.4 of the Operating Entity's Limited Partnership Agreement for additional details.

Source: https://openai.com/blog/openai-lp

OpenAI Global LLC Operating Agreement

IMPORTANT

****Investing in OpenAI Global, LLC is a *high-risk investment*****
****Investors could lose their capital contribution and not see any return****
****It would be wise to view any investment in OpenAI Global, LLC in the spirit of a donation, with the understanding that it may be difficult to know what role money will play in a post-AGI world****

The Company exists to advance OpenAI, Inc.'s mission of ensuring that safe artificial general intelligence is developed and benefits all of humanity. The Company's duty to this mission and the principles advanced in the OpenAI, Inc. Charter take precedence over any obligation to generate a profit. The Company may never make a profit, and the Company is under no obligation to do so. The Company is free to re-invest any or all of the Company's cash flow into research and development activities and/or related expenses without any obligation to the Members. See Section 6.4 for additional details.

Source: https://openai.com/our-structure?utm_source=substack&utm_medium=email

APPENDIX III: BOARD COMPENSATION

From OpenAI Inc. 2022 tax filing

Part VII **Compensation of Officers, Directors,Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Check if Schedule O contains a response or note to any line in this Part VII . . . . ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See the instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received reportable compensation (box 5 of Form W-2, Form 1099-MISC, and/or box 1 of Form 1099-NEC) of more than $100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, or highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than $10,000 of reportable compensation from the organization and any related organizations.

See the instructions for the order in which to list the persons above.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee): Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former	(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
(1) Chris Clark Sec/Tres	10.00 30.00			X				50,000	325,000	27,441
(2) Ilya Sutskever Director	5.00 35.00	X						0	312,849	21,723
(3) Rosemary Campbell Technical Staff	40.00 0.00							120,000	60,000	22,269
(4) Gregory Brockman Director	5.00 35.00	X						0	95,659	18,068
(5) Shivon Zilis Director	3.00 0.00	X						0	75,000	0
(6) Will Hurd Director	3.00 0.00	X						0	75,000	0
(7) Sam Altman Dir/Pres/CEO	5.00 35.00	X		X				0	62,400	11,146
(8) Reid Hoffman Director	3.00 0.00	X						0	0	0
(9) Adam D'Angelo Director	3.00 0.00	X						0	0	0
(10) Tasha McCauley Director	3.00 3.00	X						0	0	0
(11) Helen Toner Director	3.00 0.00	X						0	0	0

Source:

https://projects.propublica.org/nonprofits/organizations/810861541/202323199349330997/full

APPENDIX IV: OPENAI BOARD OF DIRECTORS

Current board

Director	Details
Bret Taylor (Chair)	**Age**: 43 **Gender**: Male **Education**: MS in Computer Science from Stanford University, BS in Computer Science from Stanford University **Other current occupation**: Board member at Shopify **Notable former experience**: Co-CEO at Salesforce, Chairman of the Board at Twitter, CTO at Facebook **Board tenure**: 2023 - present **Assumed status**: Independent
Larry Summers	**Age**: 69 **Gender**: Male **Education**: Ph.D in Economics at Harvard University; B.Sc. in Economics from Massachusetts Institute of Technology **Other current occupation**: Charles W. Eliot Professor at Harvard University **Notable former experience**: U.S. Secretary of the Treasury, Director & Sr. Economic Advisor at the National Economic Council, President of Harvard University **Tenure on the board**: 2023 - present **Assumed status**: Independent
Adam D'Angelo	**Age**: 39 **Gender**: Male **Education**: Bachelor of Science in Computer Science from California Institute of Technology **Other current occupation**: Co-founder & CEO of Quora; has his own AI startup called Poe **Notable former experience**: CTO at Facebook **Tenure on the board**: 2018 - present **Assumed status**: Independent
Sam Altman	**Age**: 38 **Gender**: Male **Education**: Stanford University (dropped after two years out to found startup) **Other current occupation**: CEO of OpenAI **Notable former experience**: President of Y Combinator **Tenure on the board**: 2015-2023 **Assumed status**: Not independent

Dr. Sue Desmond-Hellmann	**Age**: 66 **Gender**: Female **Education**: Doctor of Medicine from University of Nevada **Other current occupation**: Board member at Pfizer and the President's Council of Advisors on Science and Technology **Notable former experience**: CEO of Bill & Melinda Gates Foundation **Tenure on the board**: 2024 - present **Assumed status**: Independent
Nicole Seligman	**Age**: 67 **Gender**: Female **Education**: J.D. from Harvard Law School **Other current occupation**: Board member at Paramount Global, Meira GTx, and Intuitive Machines Inc. **Notable former experience**: EVP and Global General Counsel of Sony and President of Sony Entertainment **Tenure on the board**: 2024 - present **Assumed status**: Independent
Fidji Simo	**Age**: 38 **Gender**: Female **Education**: Master in Management from HEC Paris **Other current occupation**: CEO and Chair of Instacart and Board member at Shopify **Notable former experience**: Head of the Facebook app at Facebook **Tenure on the board**: 2024 - present **Assumed status**: Independent

Board before November 22, 2023

Director	**Details**
Greg Brockman (Chairman)	**Age**: 36 **Gender**: Male **Education**: Computer Science at MIT, Mathematics and Computer Science at Harvard **Current occupation**: Co-founder at OpenAI **Notable former experience**: CTO at Stripe **Tenure on the board**: 2017-2023 **Assumed status**: Not independent
Ilya Sutskever	**Age**: 38 **Gender**: Male **Education**: PhD in Computer Science from University of Toronto, Bachelor of Science in Mathematics from University of Toronto

	Current occupation: Co-founder & Chief Scientist at OpenAI **Notable former experience**: Research scientist at Google **Tenure on the board**: 2017-2023 **Assumed status**: Not independent
Adam D'Angelo	**Age**: 39 **Gender**: Male **Education**: Bachelor of Science in Computer Science from California Institute of Technology **Current occupation**: Co-founder & CEO of Quora; has his own AI startup called Poe **Notable former experience**: CTO at Facebook **Tenure on the board**: 2018 - present **Assumed status**: Independent
Tasha McCauley	**Age**: 42-43 **Gender**: Female **Education**: MBA from University of Southern California Marshall School of Business, Bachelor of Arts from Bard College **Current occupation**: Senior Management Scientist at RAND Corporation, Board member at GeoSim Systems **Notable former experience**: CEO at GeoSim System **Tenure on the board**: Joined board of OpenAI in 2018 **Assumed status**: Independent?
Helen Toner	**Age**: 32 **Gender**: Female **Education**: Master's degree in Securities Studies at Georgetown University, Bachelor of Science in Chemical Engineering at University of Melbourne **Current occupation**: Director of Strategy and Foundational Research Grants at Georgetown's Center for Security and Emerging Technology **Notable former experience**: Senior Research Analyst at Open Philanthropy **Tenure on the board**: 2021-2023 **Assumed status**: Independent
Sam Altman	**Age**: 38 **Gender**: Male **Education**: Stanford University (dropped after two years out to found startup) **Current occupation**: CEO of OpenAI **Notable former experience**: President of Y Combinator **Tenure on the board**: 2015-2023 **Assumed status**: Not independent

Other former board members

Director	Details
Elon Musk	**Age**: 52 **Education**: BA in Physics and Economics from University of Pennsylvania **Current occupation**: Founder & CEO Tesla and SpaceX, founder and owner of Neuralink and xAI, majority owner at Twitter **Notable former experience**: Co-founder of Zip2 and payments company X.com (merged with Paypal) **Tenure on the board**: 2015-2018 **Assumed status**: Independent
Reid Hoffman	**Age**: 56 **Education**: M.St. in Philosophy from University of Oxford; B.S. in Symbolic Systems from Stanford University **Current occupation**: Venture Capitalist, Founder of AI startup Inflection, Board member at Microsoft and several other companies **Notable former experience**: Co-founder of LinkedIn **Tenure on the board**: 2019 - 2023 **Assumed status**: Not Independent **Additional information**: One of OpenAI's initial investors
Will Hurd	**Age**: 46 **Education**: BS in Computer Science from Texas A&M University **Current occupation**: U.S Congressional Candidate **Notable former experience**: Case Officer at CIA **Tenure on the board**: 2021 - 2023 **Assumed status**: Independent
Holden Karnofsky	**Age**: 42 **Education**: Degree in Social Studies from Harvard University **Current occupation**: Director of AI strategy at Open Philanthropy, Board member at Open Philanthropy **Notable former experience**: Co-founder of GiveWell **Board tenure**: 2017 - 2021 **Assumed status**: Independent **Additional information**: Open Philanthropy has made a $30M donation to OpenAI.
Shivon Zilis	**Age**: 37 **Gender**: Female

	Education: BA in Economics and Philosophy from Yale University **Current occupation**: Director of Operations and Special Projects at Neuralink **Notable former experience**: Founding partner at Bloomberg Beta **Tenure on the board**: 2020 - 2023 **Assumed status**: Independent
Chris Clark	**Age**: Unknown **Gender**: Male **Education**: BA in Political Science from Stanford University **Current occupation**: Head of Nonprofit and Strategic Initiatives at OpenAI **Notable former experience**: Director of Partnerships & Operations at Loopt (Sam Altman's startup) **Tenure on the board**: 2016 - 2017 **Assumed status**: Not independent
Sue Yoon	**Age**: Unknown **Gender**: Female **Education**: BA in Accounting, International Business, and Economics from Penn State University **Current occupation**: Director of Machine Learning Infrastructure at Google **Notable former experience**: Various roles within finance and corporate development **Tenure on the board**: 2018 - 2019 **Assumed status**: Independent

APPENDIX V: TIMELINE OF MAJOR EVENTS

December 11, 2015	OpenAI is founded as a non-profit organisation by a group of research engineers and scientists with the stated goal *"..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."* (Brockman, Sutskever, 2015). Among the founders are Sam Altman and Elon Musk who become co-chairs. Elon Musk donates ≈ $100M to the venture.
November 15, 2016	OpenAI announces partnership with Microsoft
December 31, 2016	Directors include: Elon Musk, Sam Altman, Chris Clark, Jonathan Levy.
December 31, 2017	Directors include: Elon Musk, Sam Altman, Chris Clark, Holden Karnofsky, Greg Brockman, Ilya Sutskever.
February 20, 2018	Elon Musk leaves the board of directors. Official announcements suggest that this is to avoid future conflict of interest between OpenAI and Tesla. However, tweets by Musk himself later suggest that disagreement between him and the other board members might have played a role too.
December 31, 2018	Directors include: Sam Altman, Holden Karnofsky, Greg Brockman, Ilya Sutskever, Tascha McCauley, Sue Yoon, Adam D'Angelo.
March 11, 2019	Creating OpenAI LP, a hybrid of a for-profit and nonprofit, what they refer to as a "capped-profit" company, to improve their ability to raise capital and attract talent.
July 22, 2019	Microsoft invests $1bn in OpenAI.
December 31, 2019	Directors include: Ilya Sutskever, Greg Brockman, Sam Altman, Reid Hoffman, Sue Yoon, Holden Karnofsky, Adam D'Angelo, Tasha McCauley.
December 31, 2020	Directors include: Ilya Sutskever, Greg Brockman, Sam Altman, Reid Hoffman, Holden Karnofsky, Adam D'Angelo, Tasha McCauley, Shivon Zilis.
December 31, 2021	Directors include: Ilya Sutskever, Greg Brockman, Sam Altman, Reid Hoffman, Holden Karnofsky,

	Adam D'Angelo, Tasha McCauley, Shivon Zilis, Will Hurd, Helen Toner.
2021	Microsoft invests additional capital, allegedly $2bn.
November 30, 2022	OpenAI releases ChatGPT for public use and becomes the fastest growing app of all time.
December 21, 2022	Directors include: Ilya Sutskever, Greg Brockman, Sam Altman, Reid Hoffman, Adam D'Angelo, Tasha McCauley, Shivon Zilis, Will Hurd, Helen Toner.
January 2023	A multi-year, multi-billion dollar investment from Microsoft is announced, allegedly worth $10bn, bringing Microsoft's total investment in OpenAI to 413bn.
January 2023	Reid Hoffman leaves the board to avoid potential conflict of interest.
March 2023	Shivon Zilis leaves the board. Reason unknown.
July 2023	Will Hurd leaves the board to focus on his presidential candidature.
November 17, 2023	CEO Sam Altman is fired by the board of directors. Co-founder and Chairman Greg Brockman is removed from the board, and quits OpenAI later the same day. The board now consists of Adam D'Angelo, Tasha McCauley, Helen Toner, and co-founder Ilya Sutskever. CTO Mira Murati is appointed interim CEO.
November 18 - November 19, 2023	Negotiations regarding Sam Altman's return. Sam Altman allegedly demands governance changes, including the removal of existing board members. Pressure from investors.
November 20, 2023	Emmett Shear, former CEO of Twitch is introduced as new CEO.
November 20, 2023	Sam Altman and Greg Brockman are hired by Microsoft to lead its new AI research Team. Following them are several key employees who resigned from OpenAI the day Sam Altman was fired.
November 20, 2023	Almost all employees sign a letter threatening to leave the company if Sam Altman is not reinstated as CEO.

November 22, 2023	Sam Altman is reinstated as CEO of OpenAI, and 3 out of 4 board members resign. New board consists of Bret Taylor (Chair), Larry Summers, and Adam D'Angelo.
February 29, 2024	Elon Musk sues OpenAI, Sam Altman, and Greg Brockman for breaching the founding agreement and abandoning the mission in pursuit of profit
March 8, 2024	After a review of the November 2023 events by the law firm WilmerHale, OpenAI's board declares its full confidence in Sam Altman's ability to lead OpenAI and he rejoins the Board of Directors. Three additional new board members are announced, including Dr. Sue-Desmond-Hellmann, Nicole Seligman, and Fidji Simo. Several governance enhancements are announced, including updated corporate governance guidelines, a Conflict of Interest Policy, a whistleblower hotline, and a "Mission & Strategy committee".