ARE CUSTOM AI ASSISTANTS BECOMING TOO CLOSED? A CRITIQUE OF ZITTRAIN'S GENERATIVITY THEORY THROUGH OPENAI'S GPT STORE

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ABSTRACT

The generativity theory by Jonathan Zittrain indicates how technologies such as personal computers and the internet worked due to the capability of building upon them regardless of having any authorization. However, he argued that open systems might transform into "tethered" systems that are controlled by one company. The current paper applies the generativity theory by Jonathan Zittrain to the platform, which was not covered by him, which is the GPT Store, created by OpenAI. In the GPT Store, users can create their own customized AI assistants without knowing how to code. The current research questions whether the GPT Store is an open system or an illusion of an open system that is tethered in nature. In accordance with a doctrinal and analytical approach, based on the only case of GPT Store, it is found that GPT Store easily passes all criteria indicated by Jonathan Zittrain except for the criteria of accessibility and transferability. The analysis of uncertainty of ownership by the builders, their reliance upon the underlying model by OpenAI, and monopoly of OpenAI on the safety issues follows from Epic Games v. Apple, Thaler v. Perlmutter, Moody v. NetChoice and Shreya Singhal v. Union of India cases. It is contended that the GPT Store is neither totally generative, nor totally tethered, and this is called "permissioned generativity", where mass engagement and centralization coincide. The paper concludes that Zittrain's theory should include a third category that of "permissioned generativity".

Keywords: generativity, tethered systems, GPT Store, permissioned generativity, platform governance.

Introduction

Jonathan Zittrain, a legal scholar who has introduced the technological concept namely "Generativity" in a Harvard Law Review article titled "The Generative Internet" and this was later expanded into a book named "The Future of Internet - And How to Stop It"[1]. This book was published in the year 2008. In this book he uses the word generativity to explain why technologies become so powerful and widely used. The explanation which he gave was very simple: these technologies allow anyone to develop new software on top of them without prior approval. For example, in personal computers a person with basic knowledge can create new software and share it to the public without the computer manufacturer's approval. Zittrain argues that this openness is what made the personal computer and internet successful. In the same way Zittrain says that this openness will not last forever. Without any action from the side of policy makers, technologists and society, the open system slowly starts to turn into closed systems where a single company controls what can be created and who allows it to create it. He calls this closed system "Tethered System". The Tethered system also stays connected to its maker, so the maker can make any changes even after it reaches into the user. In tethered systems, one company decides what can be created and who allows it , what rules must be followed. For example, Apple appstore where every app must be reviewed and approved by the apple's company before reaching it into the public. So from this it makes us clear that the real power lies in Apple's company and not with the developer.

This paper took Zittrain's generativity theory to study something he never looked into. OpenAI's GPT Store is a modern place where ordinary people even without any coding skills can develop and share their own AI assistants. When we see this system in the eyes of Zittrain's theory the GPT Store looks like the openness system liked by Zittrain. But at the same time it has some features that look like a tethered system which he has warned about through his theory where one company keeps full control. The platform makes it easy for anyone to join in, but this easiness might be the one hiding the same kind of strict control that Zittrain has seen through Apple Appstore. The research question of this paper is whether the GPTStore really works as an open system or whether it only looks open on the surface or actually working like a tethered system or closed system within. This paper argues that the GPTStore is neither fully tethered nor generative. It allows anyone to take part, while one company keeps control over ownership and the working of the builder's tool and the rules of safety. In this paper we call

[1] Jonathan Zittrain, The Future of the Internet - And How to Stop It (Yale University Press 2008).

this condition as" Permissioned Generativity" and argue that Zittrain's framework needs to be expanded to describe this platform. The study follows doctrinal and analytical methodology. Here in this we have only used GPTStore as a case study.

Zittrain's Genarativity Theory

Zittrain's theory explains how the open design of the early internet and personal computers allowed random, unconnected people to create massive, unexpected innovations without permission from any central authority. According to Zittrain, a truly generative system relies on five main features:

i) Leverage - This makes difficult tasks easier to do.

ii) Adaptability - Technology can be easily adopted or modified easily for different uses.

iii) Ease of mastery (learnability) - making it easier for people and understandable to adopt.

iv) Accessibility - allowing anyone to easily get the tools and develop upon them.

v) Transferability - it lets creators easily share their ideas and tools with others[2].

Here Zittrain has addressed a major problem, this open system is completely unfiltered and highly vulnerable to security issues like malware, viruses and spam. This lack of security causes fatigued users to turn away open and general purpose PC's in favour of highly controlled, stable and lockdown tethered appliances. So, this shift from openness to stability threatens to permanently open computing spacing. To stop this, Zittrain proposes a generative principle that favours community self policing, flexible regulations and social solutions for protecting security while keeping the internet open for future creators[3].

What OpenAI's GPT Store Means ?

The GPT Store is a marketplace launched by OpenAI in January 2024[4]. It was built based on a feature called the GPT Builder which let the ChatGPT plus, its team and enterprise subscribers create customised versions of ChatGPT which is called as CustomGPTs or simply GPTs using

[2] Zittrain, 'The Generative Internet' (n 1).
[3] Zittrain, The Future of the Internet (n 2).
[4] OpenAI, 'Introducing the GPT Store' (OpenAI, 10 January 2024) accessed 18 October 2026.

natural language without coding knowledge[5]. A CustomGPT is a task version of the ChatGPT, which is built for simple uses like summarising documents, generating design prototypes, or answering questions on specific subjects. Within months, 3 million CustomGPTs were built and are actually public and listed on the store[6]. For publishing it, the creator must save it as visible for everyone to see it. They should also verify their identity through a builder's profile and should ensure that GPT complies with open AI's usage policies and guidelines. If GPT uses external actions and shares it publically, its builder should also provide a valid privacy policy URL and any public GPT that does not meet OpenAI's policy or product requirements may be blocked from wider distribution until it is changed[7].

Applying Zittrain's Generativity Theory to the OpenAI's GPT Store

While all five of Zittrain's factors contribute to the overall theory of generativity, the GPTStore easily meets three of them. It offers leverage, because this makes a difficult task like building an AI assistant simple. Then adaptability, here CustomGPT can be built for almost any purpose and in case of ease of mystery no coding knowledge is needed. So this paper mainly focuses on two remaining factors that is transferability and accessibility that determines whether a platform's participation can be controlled or withdrawn by a single company. This is the central concern of this study. After this the paper looks into some further three issues that arise from this and they are ownership, tethering and security.

a) Accessibility: easy entry, controlled listings

Applying factor accessibility we can see that on part of accessibility, the entry to the platform is easy and here any ChatGPT plus, team or enterprise subscriber begin building a customGPT immediately without any separate builder or technical knowledge requirement which appears to satisfy the Zittrain's requirement as he discussed through the theory. Accessibility in Zittrain's framework is not only about easy entry, it also concerns developers who can act without being subject to gatekeeping once they arrive. The GPTStore falls short here because the customGPT that a person wants to list publicly must go first through OpenAI's review process which uses automatic checking and human checking. Even after GPT is listed, it can

[5] OpenAI, 'Introducing GPTs' (OpenAI, 6 November 2023) accessed 18 October 2026.
[6] OpenAI, 'Introducing the GPT Store' (n 6).
[7] Carl Franzen, 'OpenAI Launches GPT Store but Revenue Sharing Is Still to Come' (*VentureBeat*, 10 January 2024) https://venturebeat.com/ai/openai-launches-gpt-store-but-revenue-sharing-is-still-to-come accessed 18 October 2026.

also be removed based on users' requests as well. This is the exact same feature Zittrain used to describe the Apple app's store as a tethered system rather than an open, generative one. This comparison is not only theoretical because Apple's own app store and its practices were separately challenged on legal grounds in *Epic Games v. Apple's Inc,, 559F.Supp. 3d 898(N.D.Cal 2021) aff'd in part, 67 F,4th 946 (9th Cir 2023)*[8], in this the US District court for the Northern District of California found that certain app's gatekeeping and payment control mechanisms violated California's Unfair Competition Law, even though the case did not address Zittrain's theory directly. This has shown the centralized control that Zittrain associated with tethered systems has, in Apple's case also they have drawn the independent legal scrutiny which is lending further weight to treating the same pattern of control seriously when it appears in the GPT Store's. The GPTStore passes the first half of accessibility but it fails in the second half that is being free from gatekeeping and here Zittrain has kept both halves as equally important.

b) Transferability: Sharing without freedom

There is a bigger failure which we can see in case of transferability. Zittrain's theory assumes that when a skilled person builds or develops something useful, they should be freely able to copy it, share it and change it with others. The way the early personal computers software could be passed freely without the authorization from its original creator. In the case of GPTStore it is not simply possible. A builder cannot use or copy someone's CustomGPT to make money from it. By taking together these two factors show us something important : openness only exists in how easy it is to join. Both sides of Zittrain's real test of true openness being free from gatekeeping and being free to share your work with others have failed. This means the GPTStore's openness is only the surface and it is not real because it looks open and anyone can join to it but actually works like a closed system and tethered system in the exact two ways that decide who really holds control.

c) Beyond Accessibility and Transferability: The Question of Ownership

Unlike traditional software builders who fully own their codes and people who build CustomGPTs do not truly own their work because here OpenAI's terms and conditions allow the company to change, restrict or delete whenever they want without any consent. This

[8] Epic Games Inc v Apple Inc 559 F Supp 3d 898 (ND Cal 2021), aff'd in part, rev'd in part 67 F 4th 946 (9th Cir 2023).

uncertainty has been compounded by an unresolved question in the copyright law itself because in a famous landmark case named *Thaler v. Perlmutter, 130F. 4th 1039 (D.C Cir.2025)*[9] has left open how much human direction is needed before the person guiding the AI system can be its author. Since a CustomGPT builder does provide the instructions and configuration, it remains unclear whether their work would even qualify for the copyright protection by adding a further layer of uncertainty on top of the contractual restrictions imposed by the OpenAI. The builders here perform like tenants who depend on OpenAI's permission to build and share their tools rather than owners. This is because OpenAI retains total control over profit sharing decisions, payments are controlled by the company rather than independent rights which reinforces OpenAI's role as gatekeeper.

d) Tethering in Practice : Dependence on OpenAI's Underlying Model

As per Zittrain, a tethering system means not only about who can enter into a platform, it is also about what happens when something is made and given to the people. A tethered product always connects to the company who has made it. So the company can change it or stop it from working whenever they want. The CustomGPT works in a similar way. Here the builder cannot save it and keep it separately like normal software. It can only run inside the AI model that OpenAI decides. So here when OpenAI updates or changes its model, CustomGPT starts giving different answers even though the builder has not made any changes in it. The tool which worked yesterday properly will not work today as it is and here the builder has very little control over this and at the same time the builder cannot take the CustomGPT and use it on another platform. It will only work within OpenAI's system. In the personal computer era that Zittrain has supported, i.e once a program is created by a person, it is kept the way they made it. No matter what the computer company did later. But in the GPTStore the builder's work remains the same until OpenAI's next update. From this we can understand that the OpenAI's control will not end once the CustomGPT is published. It continues everyday through the connection between the builder's work and OpenAI's system.

e) Security and control: who decides what is safe

Here Zittrain has not said that all controls are wrong. He accepts that open systems can also be misused, because anyone can build anything. Some people build harmful viruses and spams to

[9] Thaler v Perlmutter 130 F 4th 1039 (DC Cir 2025).

destroy. He also warns that when people get tired because of all these problems, they start choosing or prioritising the locked and closed systems because they feel safer there[10]. The GPTstore shows the same pattern. A CustomGPT can be built for giving harmful advice, pretending to be someone else, or collecting users personal data through external actions. OpenAI uses their review process and usage policies to stop this and many users may feel that this control is safe and good. The court has also accepted this reason. In *Epic games inc v Apple Inc* discussed earlier, the court has accepted that the Apple's app review gave real security and privacy benefits to users and this has been treated as a valid reason for Apple's control over its appstore. Similarly in the case of *Moody v Netchoice, LLC, 603 US 704 (2024)*[11] the US Supreme court has recognised that the platform decides what kind of content should be allowed to post or can remove inappropriate content, from this we can understand that they are making their own editorial choices. These cases show us that law tends to support a company's right to control its platform in the name of safety. But Zittrain's answer to the security problem was not to give all the power to one company. He has suggested that the community of users and builders should help them find and correct problems themselves while these systems remain open. In the GPTStore users can report a CustomGPT, but only OpenAI decides what content is safe and to be kept on the platform and what to be removed and here the builders may not have any idea of how these decisions are made. Indian courts have shown some concern about this kind of private judgement. In a famous landmark case named *Shreya Singhal v Union of India,(2015) 5 SCC 1*[12].There it held that intermediaries can only remove online content based on any notification or order which is received from the side of Government or court because it would be very difficult for the platforms to judge for themselves which millions of requests are legitimate. Although this case dealt with the legal takedowns, it is not a company's takedowns and not a company's own policies. This shows that the leaving one private company as the only judge for themselves what is acceptable is itself a concern. So here the safety concern itself is real, but here the GPTStore solves in a way Zittrain warned against, by moving towards a tethered system and not in the way he recommended through community self policing.

Permissioned Generativity: Whether Zittrain's framework falls short

Because of this the GPTStore does not fit into the traditional categories. It is not completely open because OpenAI controls everything there but this is also not completely locked down

[10] Zittrain, The Future of the Internet (n 2).
[11] Moody v NetChoice LLC 603 US 707 (2024).
[12] Shreya Singhal v Union of India (2015) 5 SCC 1; Information Technology Act 2000, s 79.

like Apple's Appstore because millions of users everyday can still build and publish their own tools. The paper called this situation as permissioned generativity where it allows anyone to participate while a single company keeps total control over ownership, deletion and money. This is where Zittrain's framework falls short. His theory has divided the technologies mainly into two categories, one is generative systems which are open to anyone and the other is tethered systems which are controlled by one single company. It tends to treat participation and control as moving completely into opposite directions, so that the more people can take part in the system, the more open it is. The GPTStore, it shows us that it is not true. Here mass participation and central control grows together. Because the builders join the platforms, more value depends on OpenAI. Here if we apply Zittrain's test, we could look at easy entry and call the GPTStore as generative or look at the review process and call it tethered. In his framework, Zittrain has also added control over hardware and software that sat over their own device. In the GPTStore the most important part of the builder's tool, the AI model never leaves the OpenAI system at all. So Zittarn's theory requires a third category to describe platforms where openness is real. But is granted by and can be taken back by a single company. This paper offers permissioned generativity as its third category.

Implications of Permissioned Generativity

The emergence of a condition like the permissioned generativity, it raises a concern which goes beyond the GPT Store alone. Here if a platform can present itself as the open while it is retaining full control over the ownership, removal, and the payment, then the safeguards which the Zittrain imagined like community self policing, user driven correction, and freedom to build without asking any permission may no longer the way function the way they did in personal computer's era even on platforms that appears to invite the mass participation. So, this suggests the future regulation or platform design that may lead to look at the past surface level accessibility and to examine who actually retains control over a creator's work once it is built since this is where the meaningful openness is decided here.

Suggestions: Towards Genuine Openness

Since the GPTStore shows that the openness can exist with the centralised control, the way forward is not to close such platforms but it is to make the openness they offer more real. Firstly, OpenAI's review and removal decisions should be more transparent here, because clear reasons are given to the builders and a fair way to challenge a decision. Secondly, here the

builders should be given advance notice before the major model changes and here is a possible way to export and keep their CustomGPT's instructions and files. From this we can understand that the work is not completely dependent on OpenAI's next update. Thirdly, the terms on ownership and here the payments should clearly state what rights a builder holds over their own creation and here the builders can work more as owners than as tenants. Finally, in case of matters of safety, users and builders should be given a greater role in identifying and correcting problems. This brings the platforms closer to the community self policing that the Zittrain recommended. These steps would not remove OpenAI's control completely, but they would move the GPTStore from permissioned generativity closer to the true generativity that Zittrain's theory values. In this way the concept of permissioned generativity not only explains how platforms like the GPTStore works today, but this also gives policy makers and platform designers a clear standard for measuring how open such platforms really are.

Conclusion

This analysis shows the GPTStore's openness is real only in how easily people can join in while here OpenAI retains the full control of who is allowed to publish and what creators or builders can do with their work. This is tested against Zittrain's own factors namely accessibility and transferability, this platform fails the deeper test of true generativity that is freedom from gatekeeping and freedom to transfer one's own creation. This control also does not end once a CustomGPT is published, because every CustomGPT is connected to OpenAI's system and if any change OpenAI makes to its model can change the builder's work's behaviour. Even the safety reasons behind this control are decided by the OpenAI alone, rather than through the community self policing that Zittrain recommended. This means that the GPTStore functions less as a generative system and more as a tethered one wearing an open system's appearance. This paper has termed this condition as permissioned generativity where a structure in which public participation and centralised control exist side by side, requiring Zittrain's original framework of generative versus tethered systems to be expanded properly to describe this platform of this kind. However this does not mean that such platforms must be closed or abandoned, rather the openness they offer can be made more real as the suggestions which we have stated in the above paragraph.

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