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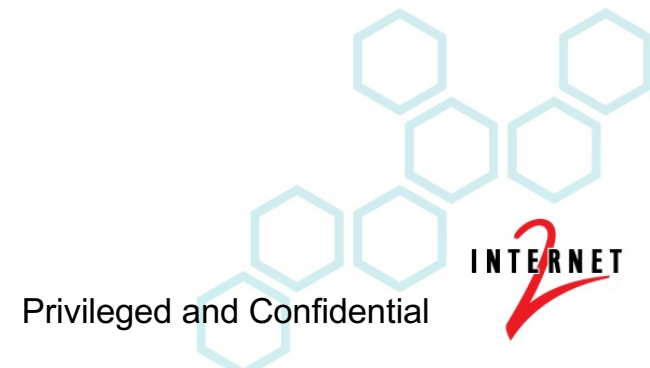
InCommon, LLC

Organizational Analysis

Privileged and Confidential

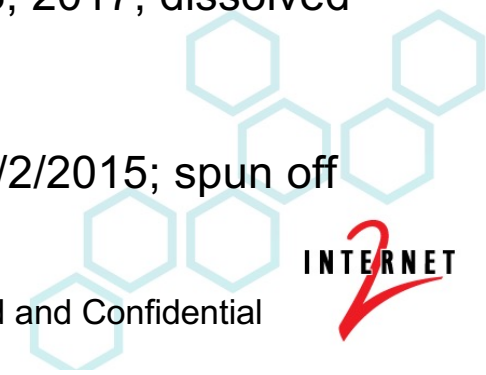
Why are we here?

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History of Internet2-Supported Legal Entities

- Michigan Information Technology Center Foundation (incorporated 8/27/2002; dissolved 8/31/2010)
- National Research & Education Fiber Company, LLC (aka “FIBERCO”) (incorporated 1/3/2003; Internet2 decision to terminate)
- **InCommon, LLC (incorporated 5/7/2004; ongoing)**
- Advanced Infrastructure for Research and Education (incorporated 7/14/2005; dormant)
- Digital Preservation Network (formed in 2012; incorporated January 3, 2017; dissolved February 27, 2019)
- Unizin (Consortium Operating Agreement 6/11/2014; incorporated 12/2/2015; spun off as a separate legal entity as of 4/30/2016)



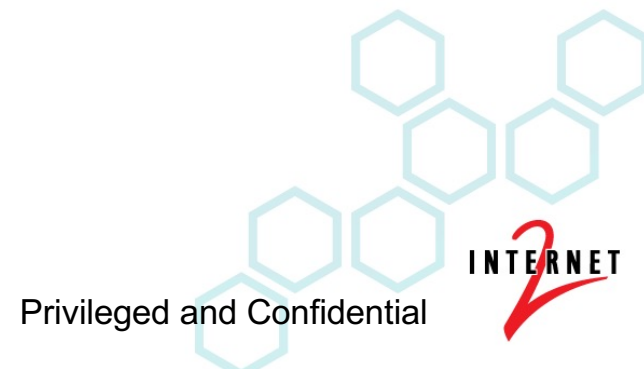
Internet2's Administrative Infrastructure

- Substantive Expertise
- Administrative Support
 - Office Space and Equipment
 - Human Resources
 - Benefits (e.g., Healthcare, Retirement)
 - Information Technology Services (e.g., Software Licenses)
- Marketing and Communications
- Hosting Events

Internet2's Administrative Infrastructure (cont'd.)

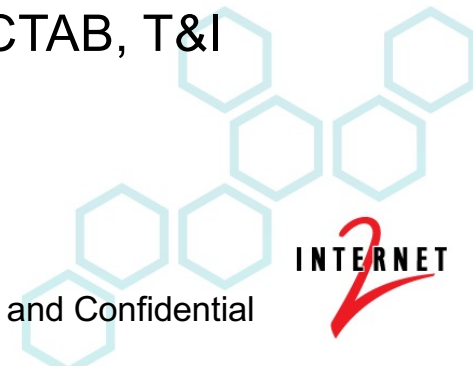
- Financial Services
 - Banking
 - Payroll
 - Form 990
 - Payment/Collection of Invoices
 - Financial Reporting and Auditing
- Legal Service/Risk Mitigation
 - Established Corporate Policies
 - Business Formation Documents
 - Insurance
 - Contract Negotiations

How does this relate to InCommon?



InCommon, LLC

- Single Member LLC – (Established by Internet2)
- Considered a “disregarded entity” for tax purposes
- Prohibited from taking certain actions without Internet2 approval
 - Entering into contracts > \$50,000
 - Borrowing > \$25,000
 - Selling assets
 - Litigating
 - Etc. (see sec. 6.01(I) of LLC Agreement)
- Governance by Steering Committee and other groups (TAC, CTAB, T&I, PAG, CACTI)
- May be dissolved at any time by Internet2



Legal Considerations

- Corporate entities limit their owners' liability.
- Piercing the corporate veil is where courts may ignore the presence of a corporate entity and hold its owners personally liable for the acts of the corporate entity.
 - Alter Ego Doctrine - Piercing the corporate veil may arise when the corporate entity is the mere instrumentality, agent, or alter ego of its owners.
 - Courts look at several factors to determine if piercing the corporate veil is warranted under the Alter Ego Doctrine.
 - All of the factors are considered together and no one factor dominates the analysis.



Legal Considerations (cont.)

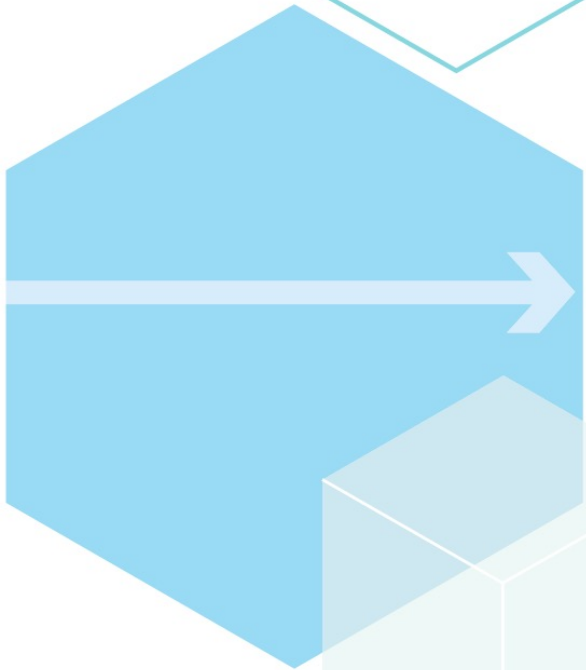
- Alter Ego Doctrine factors to consider:
 - Adequate capitalization of corporate entity
 - Corporate entity solvency
 - Corporate entity formalities being followed
 - Corporate entity funds extracted by controlling owner/shareholder
 - Corporate entity being used as a facade for controlling owner/shareholder
 - Sharing of Trustees and Officers, staff, facilities, and resources
- Reverse piercing can also occur (Internet2 liabilities imposed on InCommon). InCommon activities could be viewed as assets of Internet2 subject to reach of Internet2 creditors.

*Each Board may
be responsible
for the actions
of the other
Board.*

Organizational Considerations

- Compliance with InCommon, LLC Agreement
- Compliance with the InCommon, Inc. Bylaws
- Identification of Financial interdependencies
- HR/Management Issues (Employer/Employee + Supervisor/Subordinate + Cost Allocation)
- Conflicts of Interest (for Steering Committee Members, Internet2 Trustees, and Staff)
- Signature Authority (potential for ultra vires acts)
- Contract Negotiations





Questions?