

Filtering

Professor Grimmelmann

Internet Law

Fall 2007

Class 8

Where we are

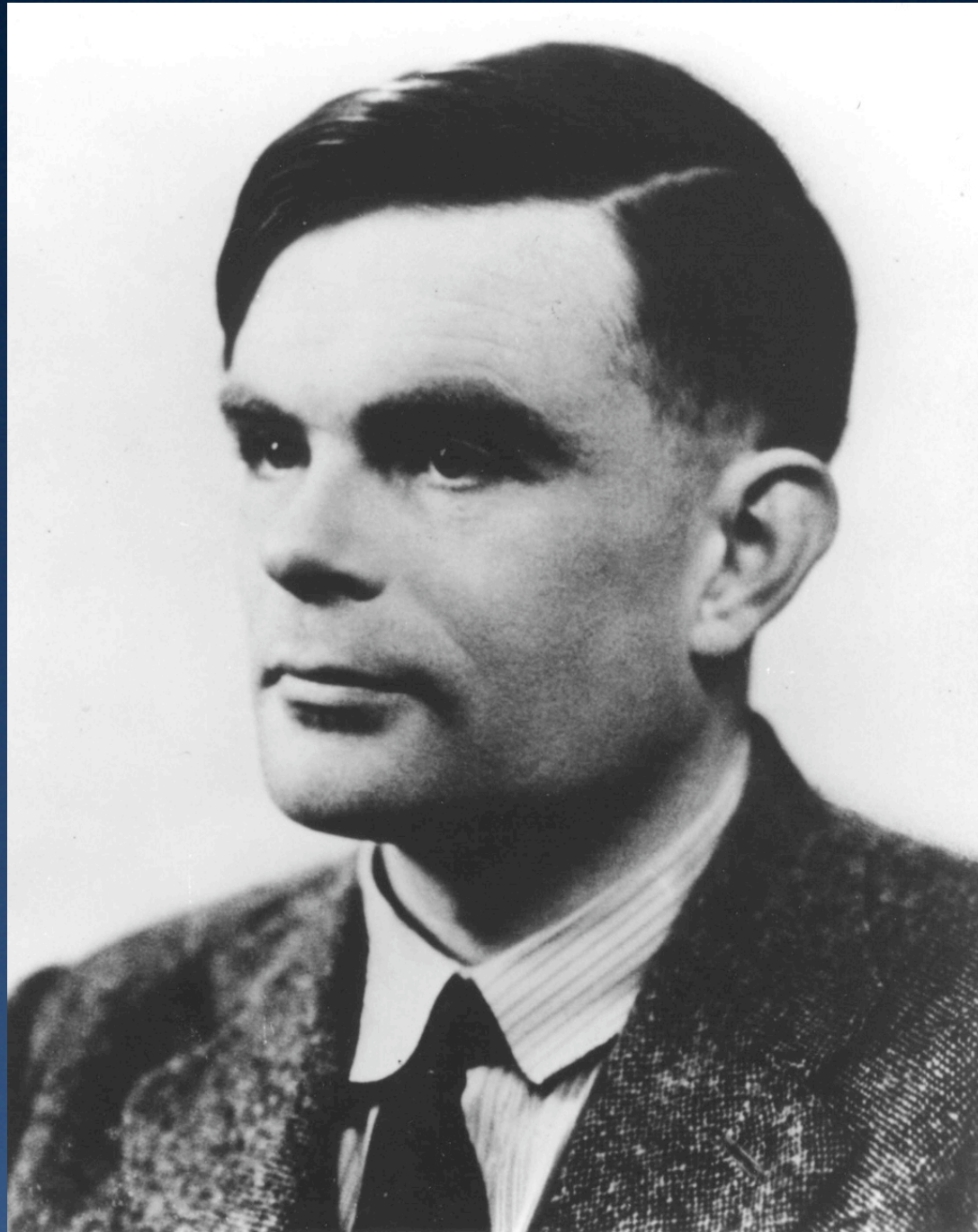
- Introduction
- Part I: Public Law
 - Jurisdiction
 - Free Speech
 - Intermediaries
 - Privacy
- Part II: Private Law

In today's class

- Filters: computer science and policy issues
 - Man vs. machine
 - Underblocking vs. overblocking
 - Metadata
 - Where in the network?
- Filters and the first amendment
 - *Ashcroft v. ACLU* and *U.S. v. ALA*

The Computer Science and Policy of Filters

A little intellectual history



Alan Turing (1912–54)
Father of computer science

The Turing Test



Are you talking to a person or a computer?

The Turing Test



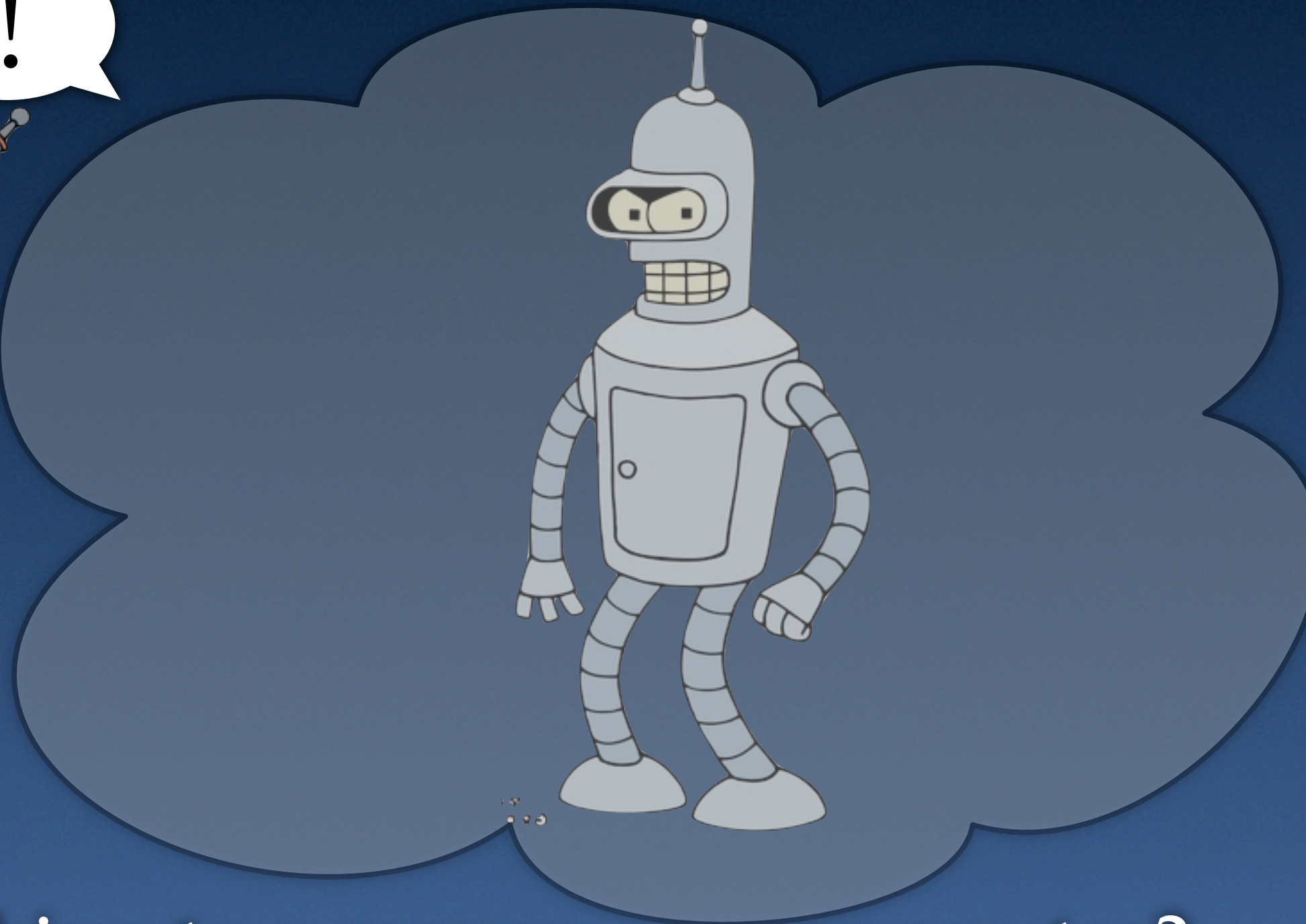
Are you talking to a person or a computer?

The Turing Test



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Are you talking to a person or a computer?

People vs. computers: differences?

People vs. computers: differences?

- rules vs. standards
- computers are faster
- computers can handle higher volumes
- people make dumb mistakes
- individual bias vs. programmer bias
- people can't always explain themselves
- when computers fail, they can fail badly

Underblocking and overblocking

- Underblocking: bad stuff gets through
- Overblocking: good stuff gets stopped
- Trick question: Which is worse?

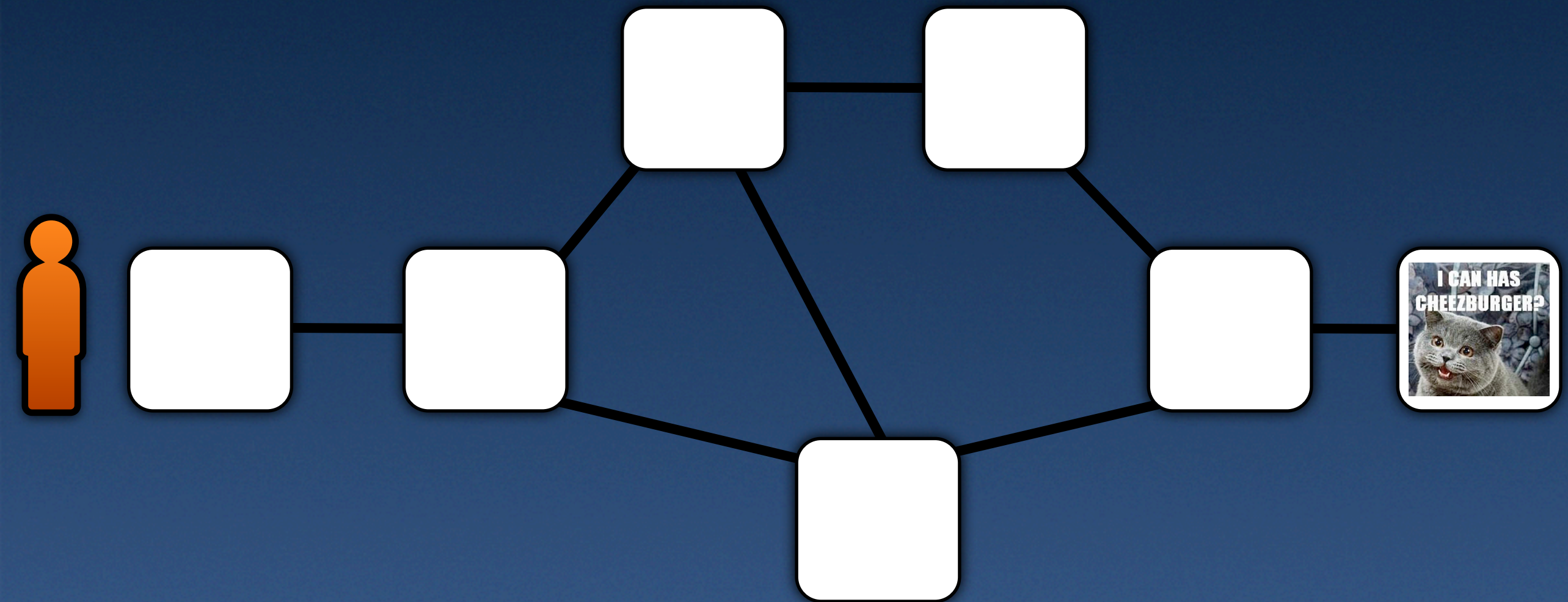
Metadata

- If you're a computer, how do you figure out whether something belongs to a fuzzy category like "harmful to minors?"
- Often, by using metadata
 - E.g. IP address or URL (cf. *Yahoo*)
 - E.g. filename (cf. *Napster*)
 - E.g. nearby text
- Metadata as a proxy for the real thing

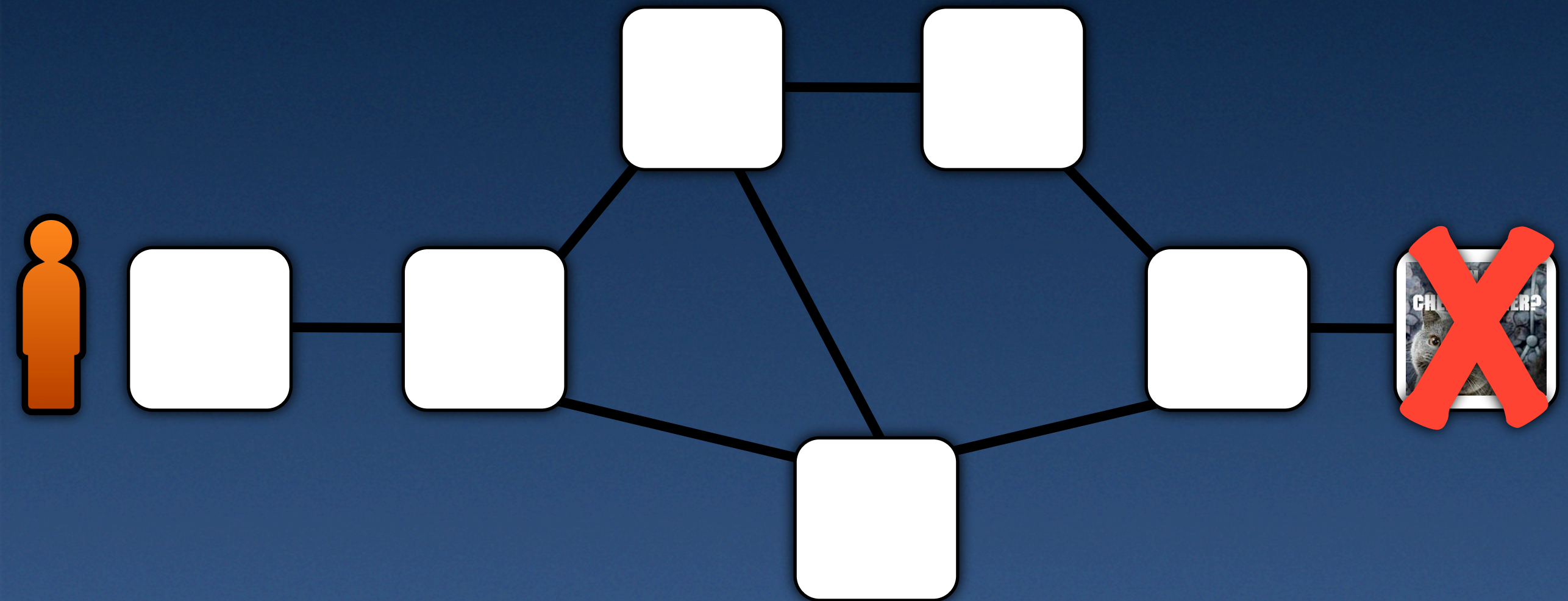
Where in the network?

- Who could run filters?
 - Providers, backbone, ISPs, or users
- Tagging as a filtering strategy
 - Provider-supplied tagging
 - Third-party tagging
- These choices have big consequences

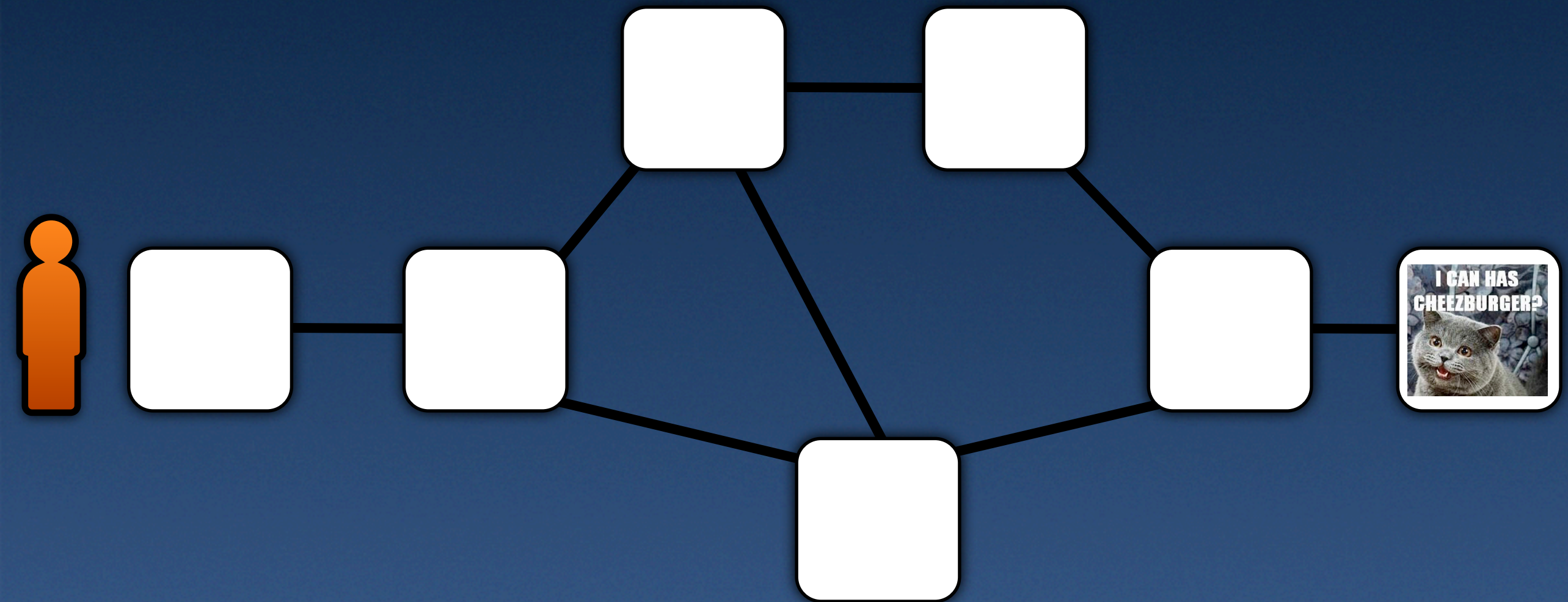
Blocking at the source



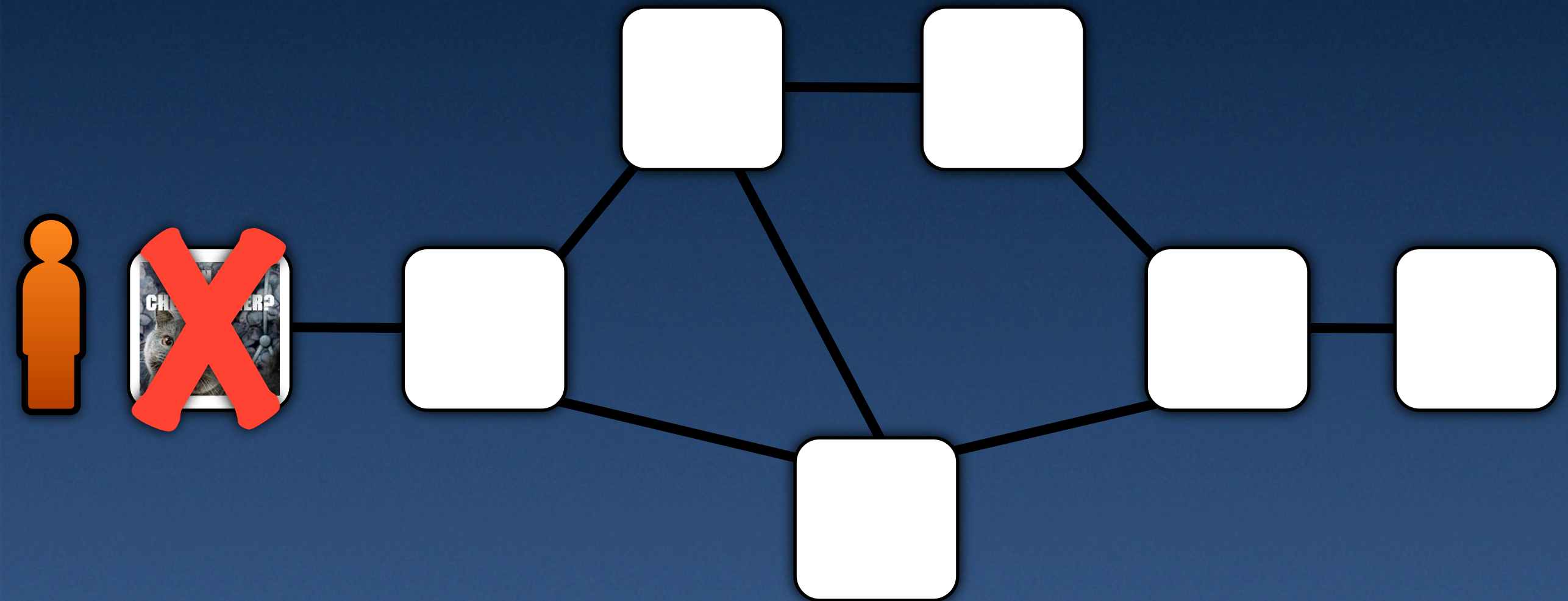
Blocking at the source



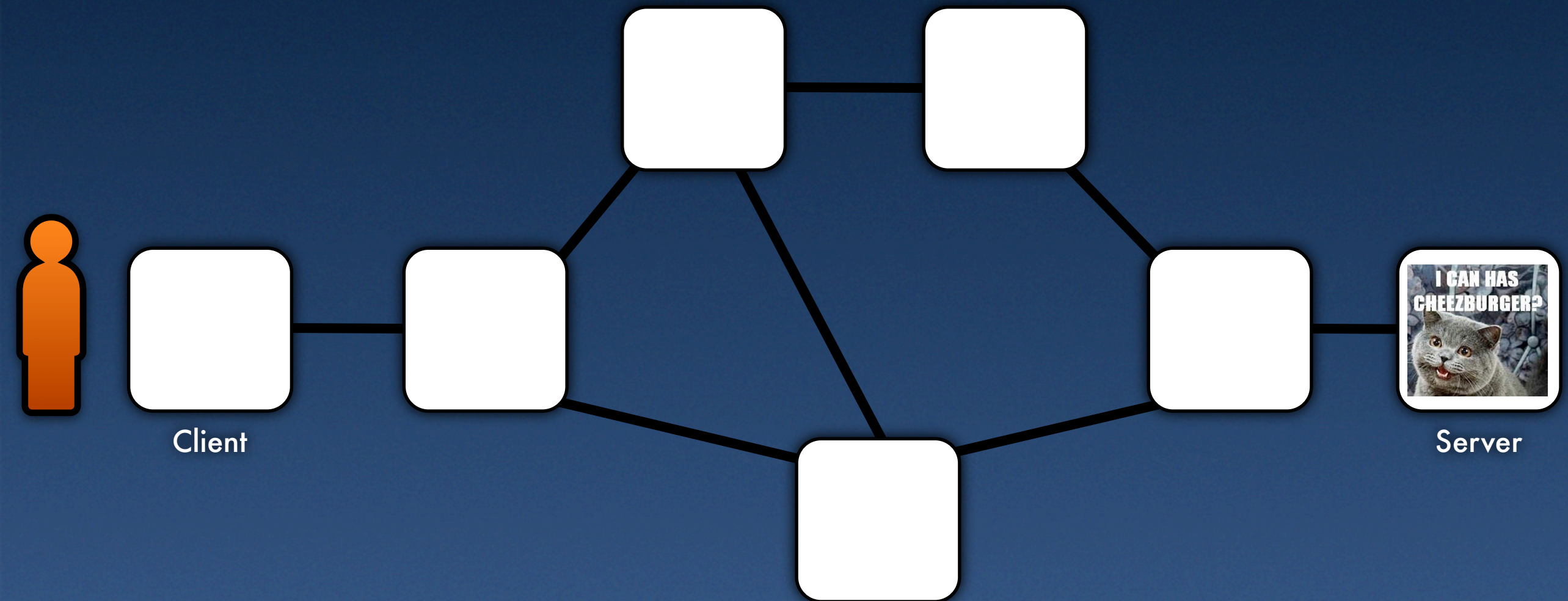
Blocking at the destination



Blocking at the destination

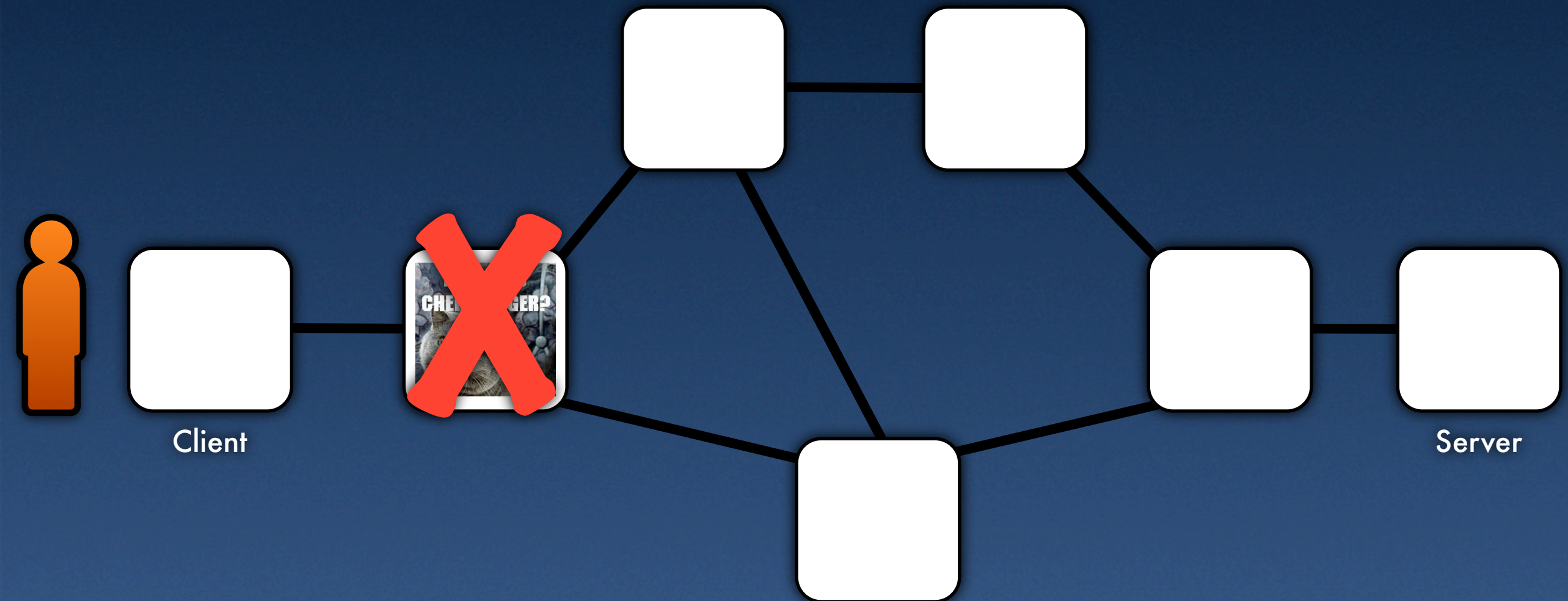


Blocking in the network



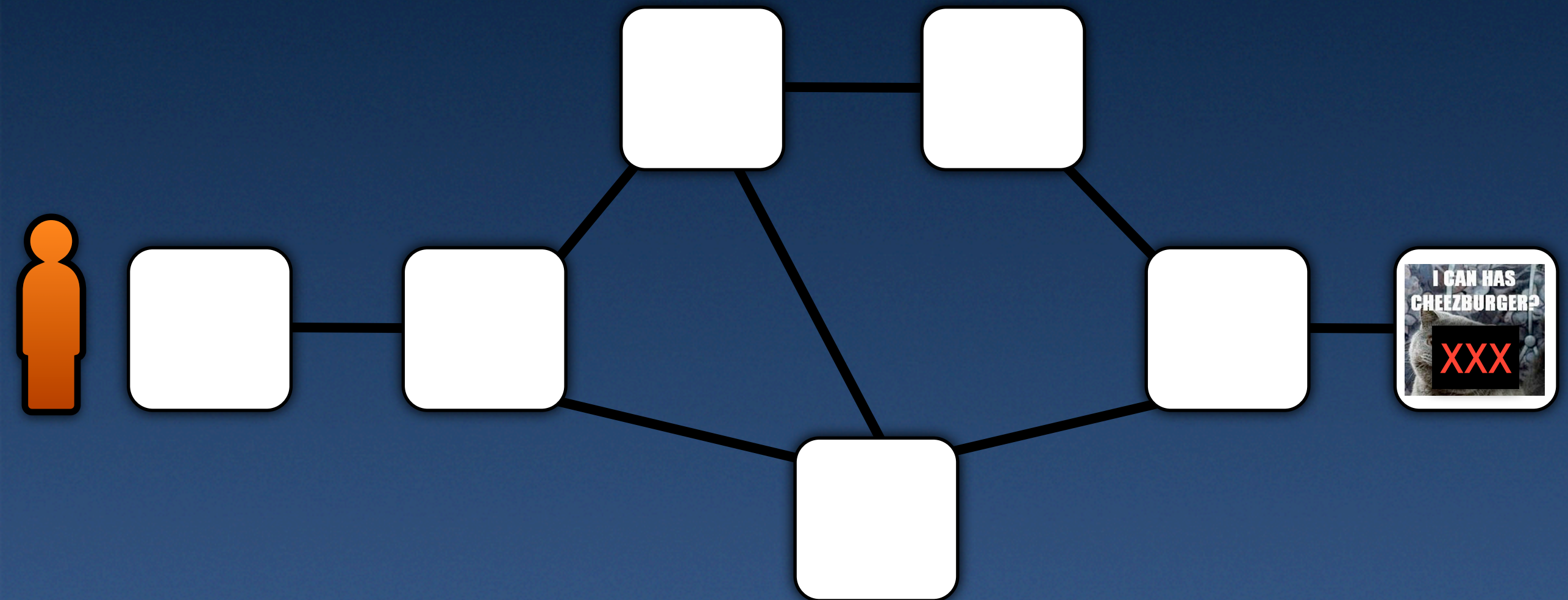
This is a harder problem than blocking at the source or at the destination

Blocking in the network

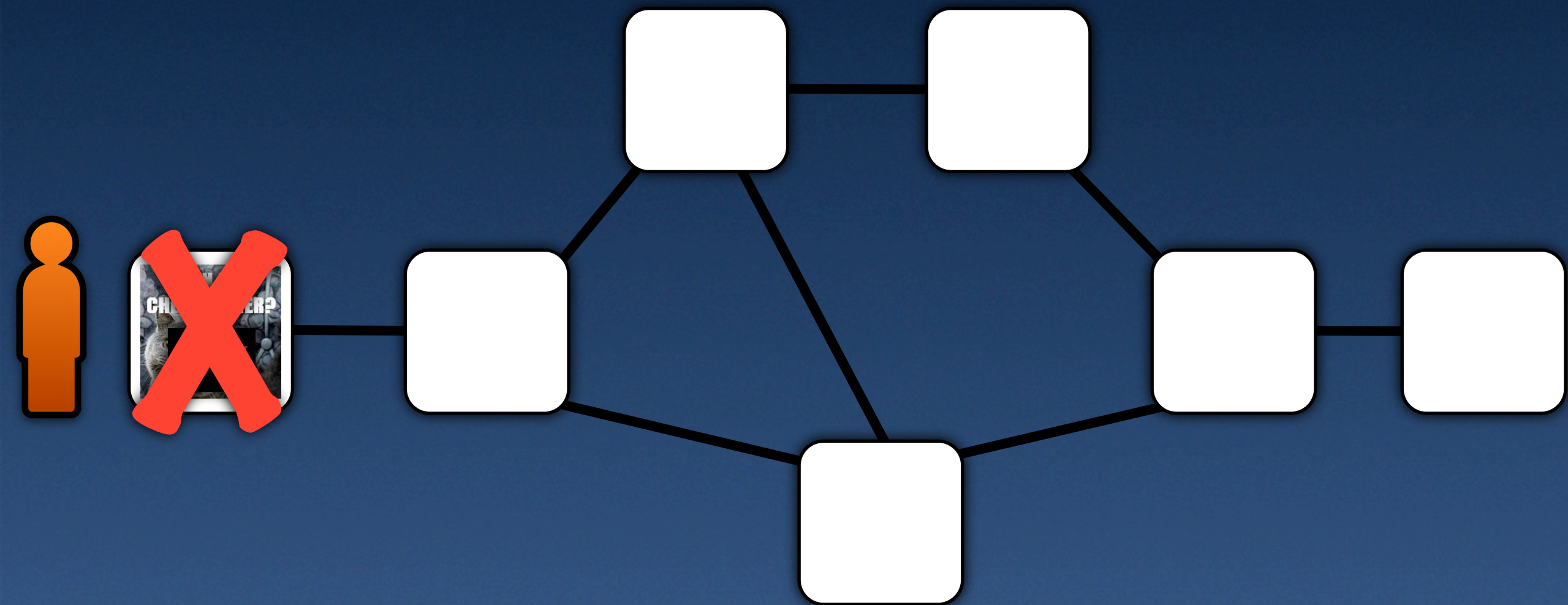


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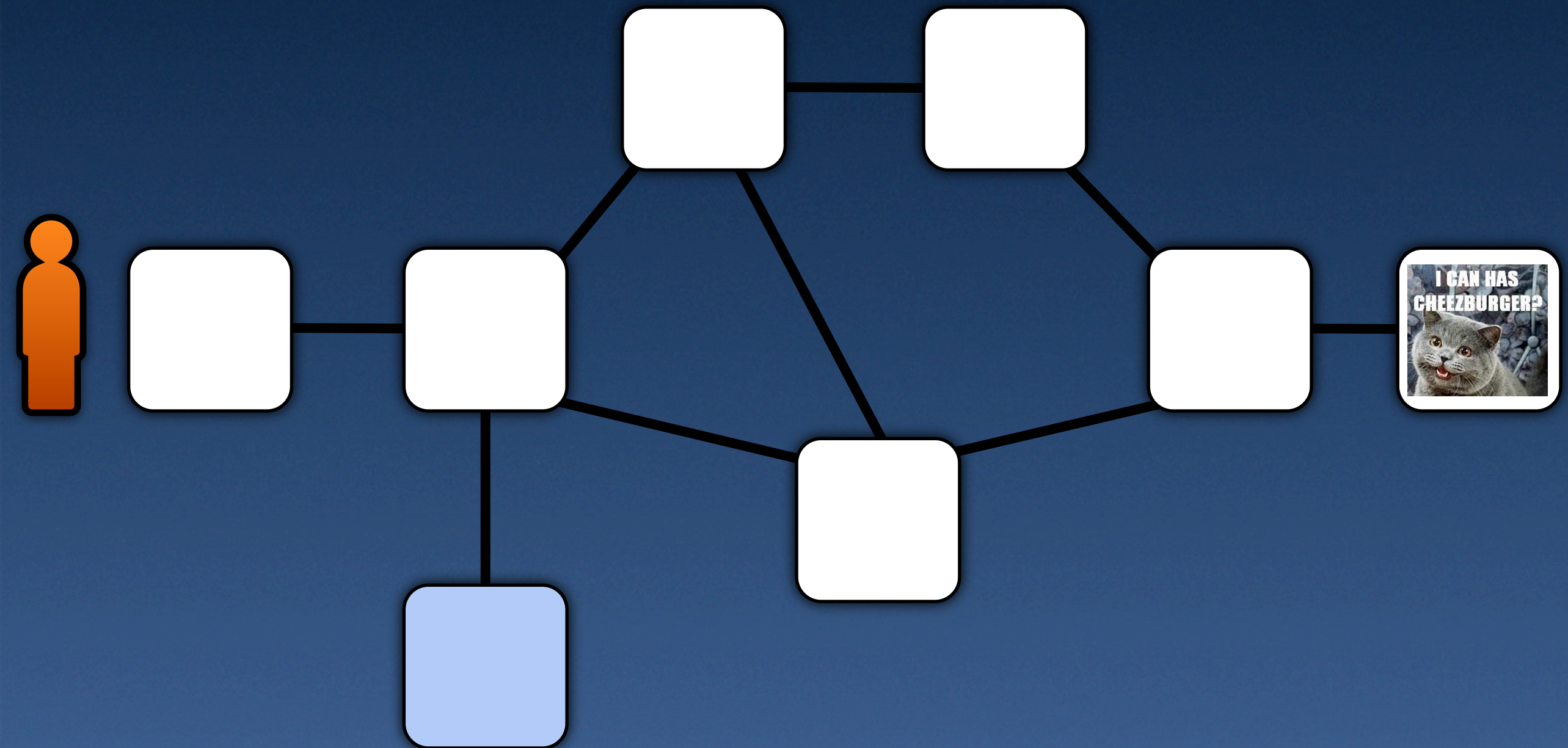
Source-based tagging



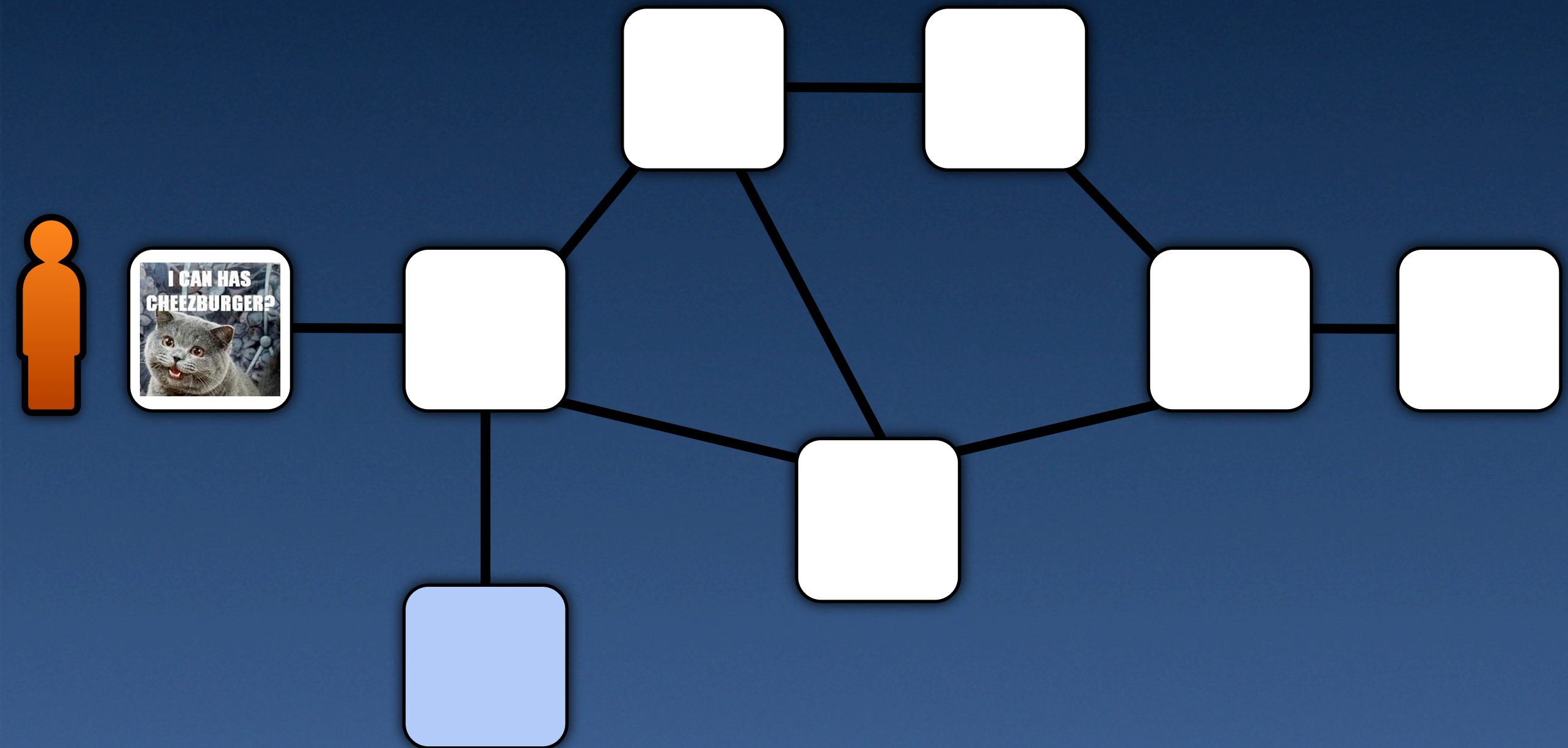
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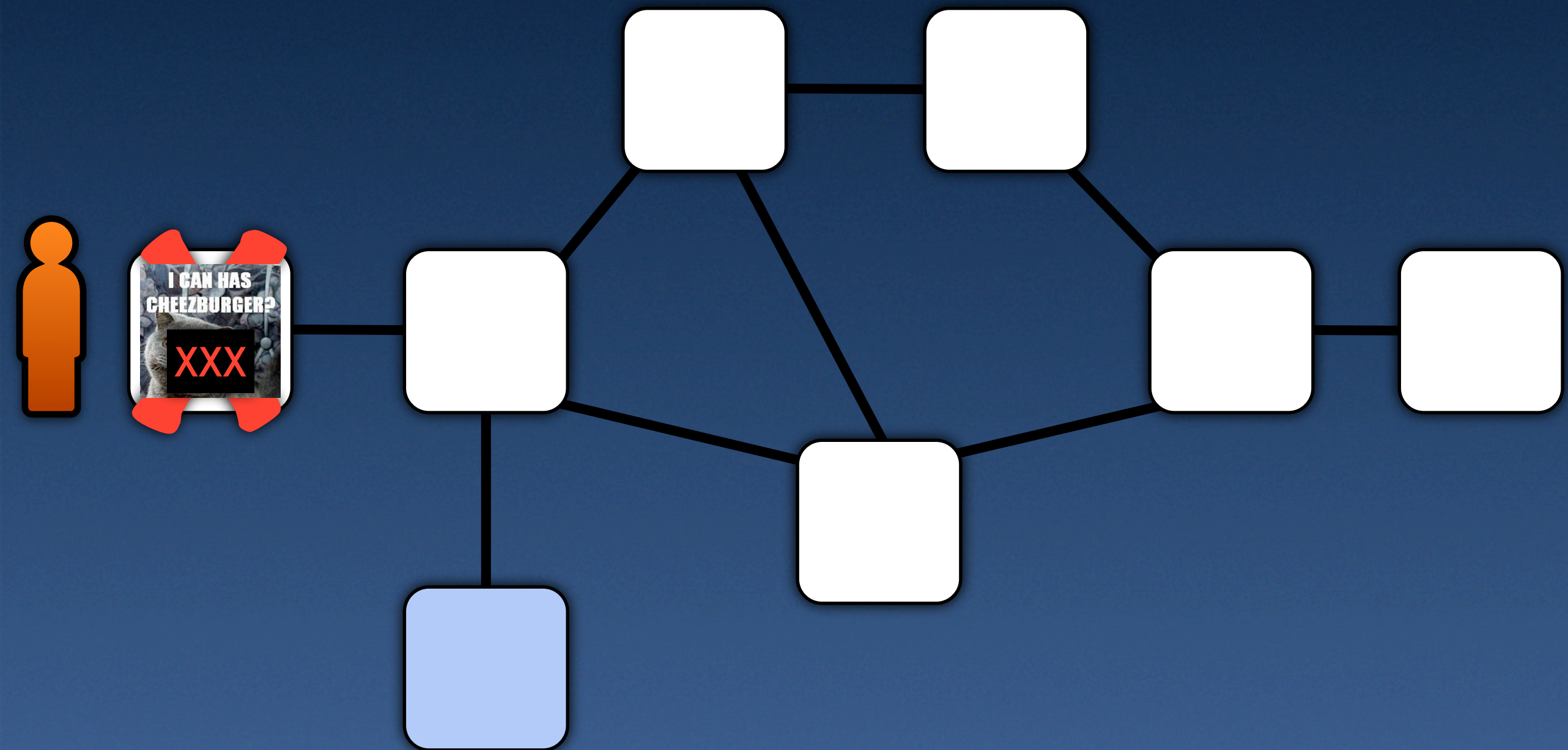
Third-party tagging



Third-party tagging



Third-party tagging



Filtering and the First Amendment

Ashcroft v. ACLU (2004) (redux)

- Anti-obscenity statute unconstitutional because filters are a less restrictive alternative
- What kind of filtering architecture does the Court have in mind?
- Is that architecture better for free speech than COPA would have been?

U.S. v. ALA (2003)

- CIPA gives money to libraries, *provided that* they put filters on their public computers
- The libraries may disable the filters “to enable access for bona fide research or other lawful purposes”
- This is a Spending Clause case, so the *Dole* test applies

Dueling metaphors

- Rehnquist: filtering is like choosing which books to order
- Souter: filtering is like tearing pages out of books
- Which metaphor is better?

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 - Hint: what would human filtering of Internet access in libraries look like?
 - Both metaphors are misleading!

Overblocking

- Rehnquist and Stevens disagree about the legal consequences of the inevitable overblocking
 - Why inevitable?
 - What's the doctrinal hook?
 - Why does Rehnquist think that overblocking is irrelevant?

Disabling the filters?

- How much of a burden is it to have to ask to have the filter disabled?
- Stevens argues that the statute says only that the library “may” disable the filters, not that it “must”
- After this case, may a library disable them on request, or must it?
 - This is a hard, hard question!

Counting noses

- Rehnquist's plurality gets four votes. To get to five, you need either Kennedy or Breyer.
- Both of whom say to bring an as-applied challenge if a library doesn't agree to disable the filters
- But do they say how they'd rule if someone did bring such a challenge?
- Nooooooooooooo

Next time

Defamation and other fun torts