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LIABILITY OF CLARIN CENTRES AS SERVICE PROVIDERS: WHAT CHANGES WITH THE NEW DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET?

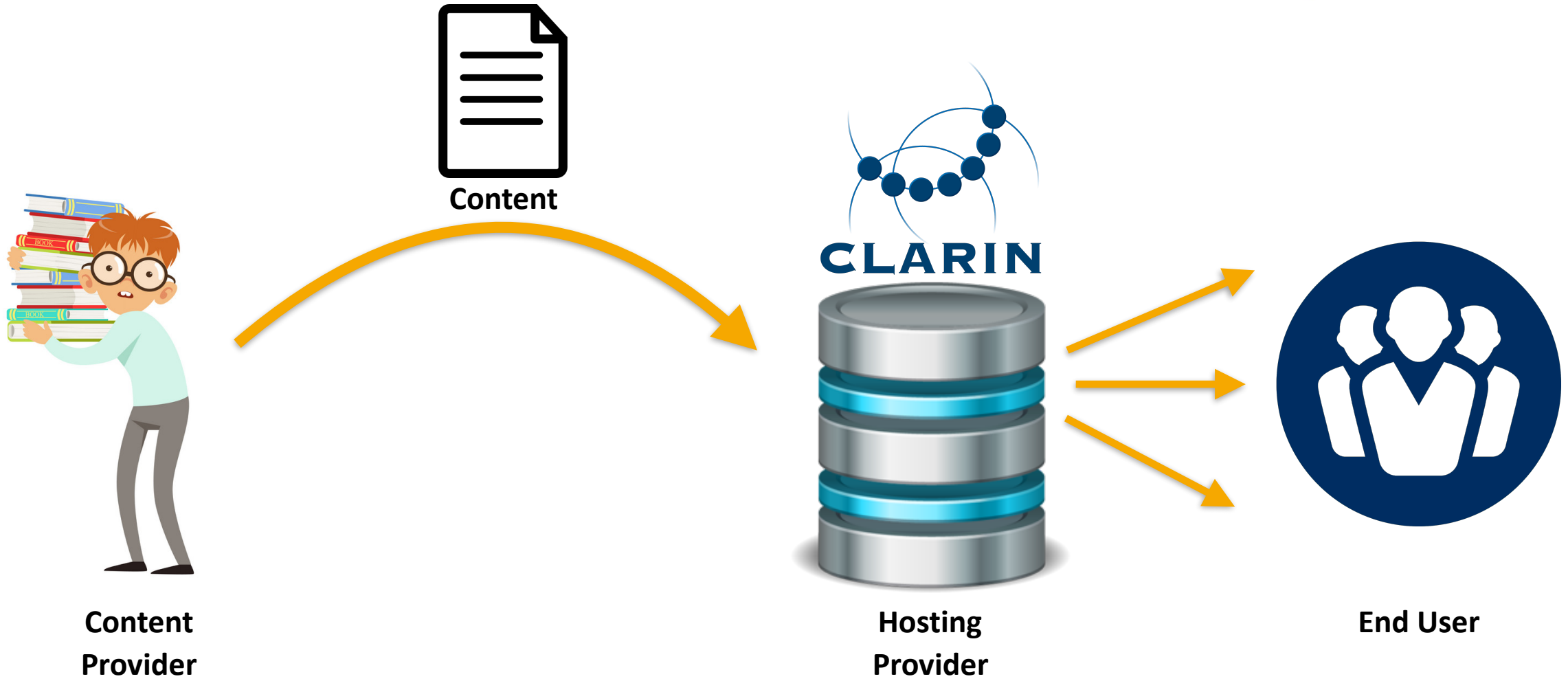
- **Directive 2019/790 of 17 April 2019 on copyright in the Digital Single Market**
 - European Commission draft: 14 September 2016
 - rejected by the European Parliament in July 2018, then accepted September
 - finally adopted on 26 March 2019, mostly due to the votes from France
 - most ambitious EU copyright effort since 2001 (InfoSoc Directive)

 - **Many provisions of relevance to CLARIN and digital humanities:**
 - text and data mining exceptions (articles 3 and 4)
 - use of out-of-commerce works by heritage institutions (articles 8-11)
 - possibility to introduce extended collective licensing (article 12)
 - new rules on liability of content-sharing service providers (article 17)
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CLARIN CENTRES AS SERVICE PROVIDERS

IDS

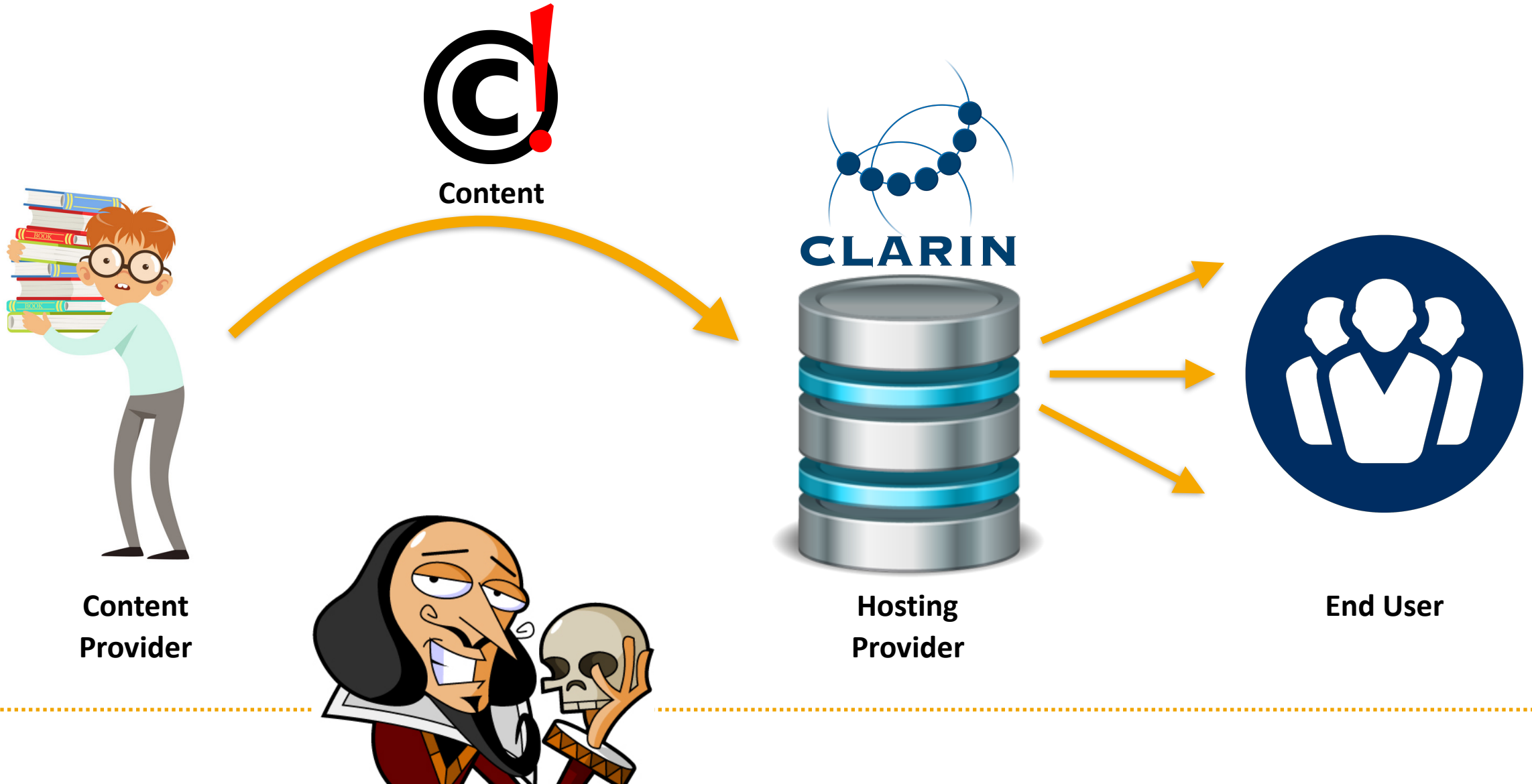
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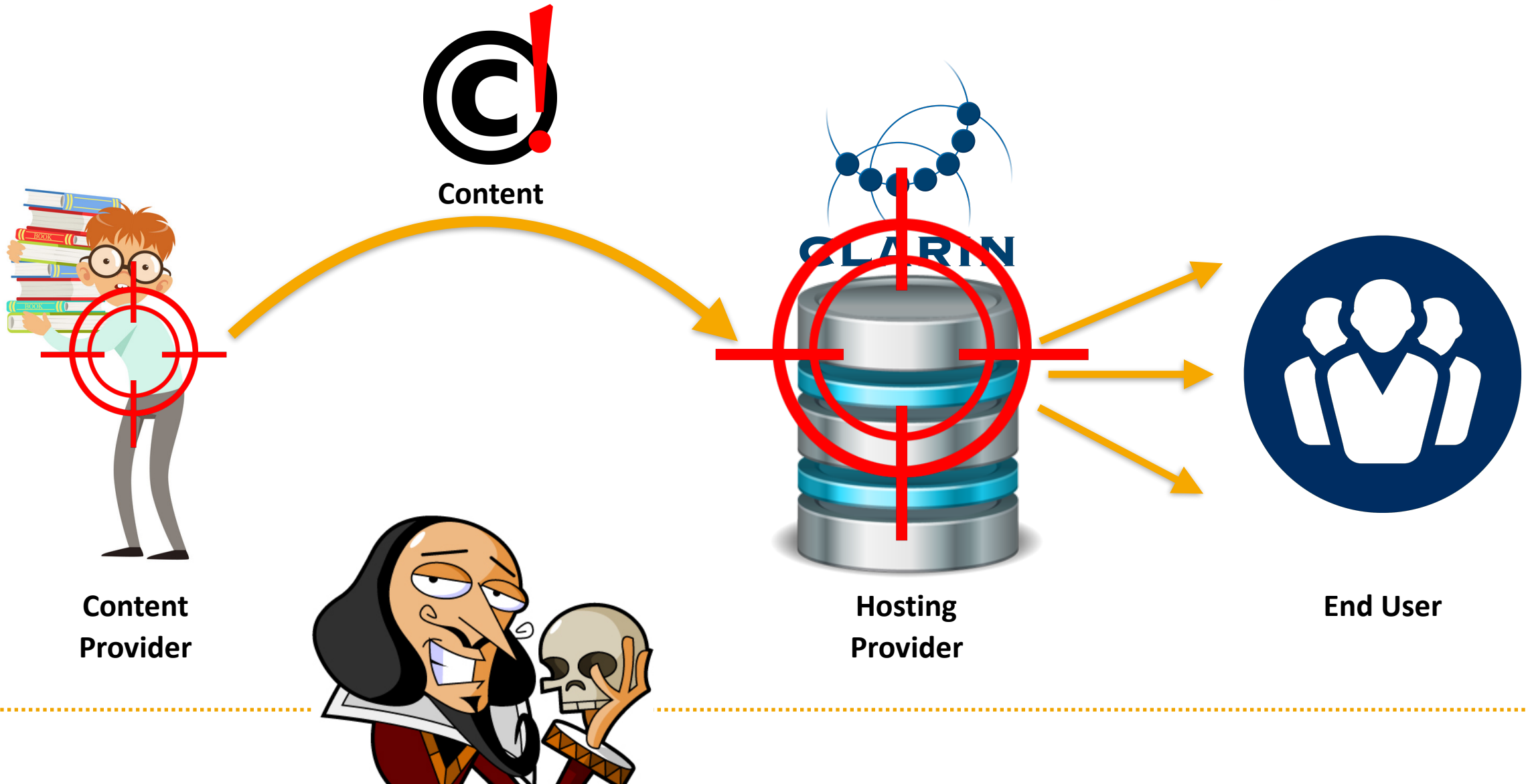
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- **Directive 2000/31/EC of 8 June 2000 on e-commerce**
 - hosting provider is not liable for information provided by content providers iff:
 - the hosting provider is not aware of the content of the information AND
 - once he becomes aware, he acts promptly to remove it (**notice-and-take-down procedure**)
 - **Court of Justice of the European Union, 23 March 2010, Google vs. Louis Vuitton**
 - in order to qualify for the liability limitation, the provider has to play a **passive role** so as not to have control over the content
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Content Provider

Has 'editorial power' over the content

Can be liable for the content

Hosting Provider

Passive role AND
Notice-and-take-down procedure

Is not liable for the content

Content Provider

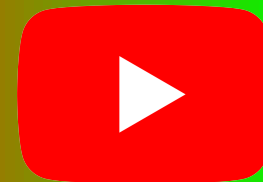
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Hosting Provider

Is **not** liable for the content IFF:

- passive role AND
- notice-and-take-down procedure



WHAT'S NEW IN THE DSM DIRECTIVE? (1/2)

- **New category: online content-sharing service providers (OCSSPs)**
 - a provider of a service of which the main purpose is to store and give the public access to a **large amount of copyright-protected works** uploaded by its users, which it **organises and promotes for profit-making purposes.**
 - exclusions:
 - non-for-profit online encyclopaedias (Wikipedia)
 - non-for-profit educational and scientific repositories (CLARIN Centres?)
 - open source software-developing and-sharing platforms (GitHub)
 - online marketplaces (Amazon?)
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WHAT'S NEW IN THE DSM DIRECTIVE? (2/2)

- **OCSSPs are liable for copyright infringement UNLESS:**
 - they obtain a license from the right holder, covering also non-commercial use by end-users OR
 - best efforts to obtain the license (due diligence) AND
 - best efforts to make notified content unavailable and prevent it from re-appearing (notice-and-stay-down)
 - highly criticised ‘censorship machines’
 - threat to user-generated content (e.g. memes), but also to some copyright exceptions (criticism, parody, review...)
 - even though the Directive obliges Member States to protect the exceptions...
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THE LANDING STRIPE IS GETTING THINNER

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Is **not liable** IFF:

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Online Content-Sharing Service Provide (OCSSP)

Hosts large amounts of works for profit

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- **Member States have until 7 June 2021 to implement the DSM Directive**
 - implementation of EU law is often delayed, but
 - procedures for non-conformity
 - **Poland has challenged art. 17 in front of the CJEU**
 - limitation of freedom of expression
 - strong political flavour to the complaint
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TAKEAWAY MESSAGE FOR CLARIN CENTRES

- **To avoid liability, be a hosting provider, not a content provider!**
 - assume a passive role, do not edit the content provided by users
 - implement a notice-and-take-down procedure
 - **If you want to have a more active role in the process (e.g. modify the content), assume the responsibility**
 - conduct thorough copyright clearance, do not *trust* the providers
 - **If you want to engage in a for-profit activity (e.g. paid access, ads, public-private partnerships?), think twice and be aware of the consequences!**
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