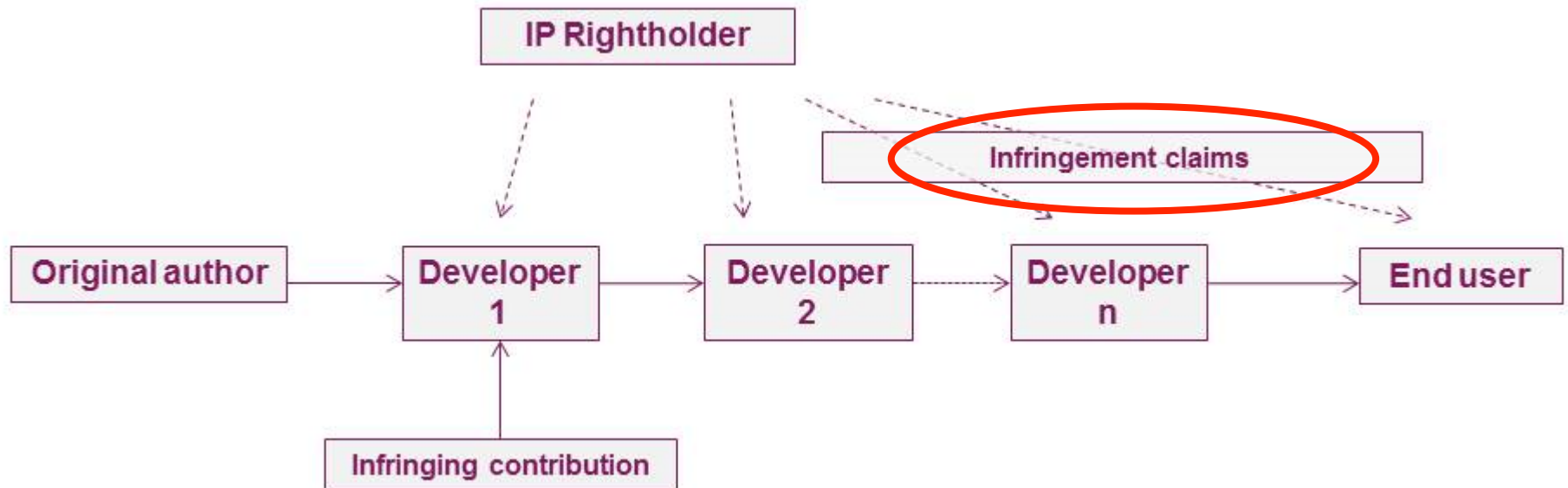




IP Risks for OSS Developers

How to protect yourself against IP infringements by other developers in an open source project?

Open source project X



Introduction of third party IP infringements risks in the developer-chain (M. Välimäki and V. Oksanen).

IP protection of OSS

- General: computer programs are protected by copyright
 - No exemption for OSS!
- What is covered?
 - “Literary and artistic works” (Art. 1 Copyright Act) + Berne Convention;
 - EU Software Directive

IP Risks – COPYRIGHT

Criteria:

- Threshold originality → own intellectual creation
- Expression → original expression
- No protection of:
 - The functionality of the computer program –
 - The programming language and the format of data files used in the program
 - Graphic user interface

IP Risks - COPYRIGHT

- Formalities?
 - Mere act of creation is sufficient
 - Computer program does not have to be finished
- Who is the author?
 - In principle: the creator

IP risks - COPYRIGHT

- Various original works:
 - First original creation
 - Derivative work

IP RISKS -

- Copyrights:
 - Patrimonial rights or “economic rights”
 - Moral rights: to safeguard the link with the author
- Co-authorship?
 - Everyone who made an original contribution
 - NOT: ideas, instructions

IP Risks -COPYRIGHT

- Licensing: limitation of the rights
- Many types of (open source) licenses

IP Risks - COPYRIGHT

- 2 types of infringements:
 - Unlawful use of the code
 - Infringement of your license terms

- Requirement of knowledge?
 - Not relevant if developer was unaware

IP Risks – PATENTS

- In principle excluded under European law
 - But European Patent Office grants software patents
 - Condition of novelty, non-obviousness and technical solution
- ➔ Allows you to protect the underlying idea!

IP Risks - PATENTS

- Principle of territoriality
 - Limited scope of protection
- Combination with copyright

IP Risks

- Exoneration in license agreements?
 - Art. 1165 Belgian Civil Code
 - Relativity principle

Protection Mechanisms

OWN CODE – write in good faith:

- Avoid duplication – start from zero;
- Keep records; use revision control systems.



CODE OF OTHERS – join in good faith:

- Preventive mechanisms:
 - Identify upstream developers and their code;
 - Get open source insurances.

- Remedial efforts:
 - Modify the code;
 - Negotiate additional licenses.

Conclusion

No crystal clear solutions...

A Stitch in Time saves Nine...

Tips for re-using code or contribute to a OSS project:

1. Read the licenses of the used code carefully;
2. Check compliance of the license with the code;
3. Respect the conditions of the license;
4. ⇔ If not, ask the author for a different license.