FOSDEM 2014 / legal and policy issues / IP risks for OSS developers / Yung Shin Van Der Sype & Soo Mee Provoost
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.