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Buddhism and Intellectual Property Rights: The Role of Compassion¹

Soraj Hongladarom²

Abstract

I offer the outline of a theory that justifies the concept of intellectual property (IP). IP is usually justified by a utilitarian claim that such rights provide incentives for further discovery and protect the innovator through a monopoly. I propose to broaden the protection offered by the IP regime. My argument is based on the concept of compassion (*karuṇā*), the aim of relieving suffering in all others. An analysis of how patented products originate shows that they typically depend not only on scientists in the laboratory, but on numerous factors and elements, many of which do not belong to the corporation in which

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the experiments are conducted. Because these elements have a necessary role in the discovery of inventions, they also deserve fair treatment. In practice, this could mean that the resulting patented product would be made more accessible to the general population and that the corporation would be more actively involved in society. In the long run, this could prove beneficial for all parties, including the patent holders themselves.

Introduction

A claim to intellectual property rights (IPRs) allows a period in which the rights holder is entitled to a monopoly on the use of the property and in which he/she can gain monetary returns. International commerce has resulted in claims of intellectual property rights in nearly every country around the world. However, these claims are frequently controversial. Defenders typically argue that IPRs are necessary as an incentive for creative work and innovation that can be beneficial to the world. Critics argue that by holding a monopoly, the rights holder can create an unjust situation in which the patented product carries an unusually high price in the market. When the product is a necessity, such as life-saving medicine, those who are in need of the product might not be able to afford it. The monopolistic nature of IPR claims, then, can become a source of inequality and injustice.

The controversies created by the use and enforcement of IPRs in various fields point to the need to explore the very foundation of the concept of IP. In this paper, I will consider how Buddhist ethics might regard the problem. My basic question is: How could the concept of IP be modified into an ethical one? A related question is: How might concepts available from Buddhism have a role to play in such modification? These

are very complex questions. Here I merely hope to provide a general outline for the further development of a theory based on Buddhist philosophy. I argue that the notion of compassion (*karuṇā*) is central to answering these questions. Compassion is the desire to alleviate the suffering of others and acting to bring this about, so long as this is possible. Hence the holder of an IPR is said to be compassionate when she sees the suffering borne by her fellow human beings and, realizing that the intellectual property to which she is entitled can alleviate that suffering, acts accordingly. Here “compassion” is not only a term that denotes the subjective feeling of one who is compassionate, but also the objective and concrete actions that the compassionate perform to act out these feelings. I further argue that she should act in this manner because this would be beneficial to everyone in the long run, including the rights holder herself.

Buddhism and the Concept of Property Rights

A central teaching of the Buddha is that in order to achieve the final goal of liberation, a practitioner must learn how to eliminate ego grasping. Ego grasping consists of thinking in terms of “me” and “mine.” The two are always intertwined. Without the “me” there can be no “mine,” and vice versa. Thus, from the perspective of this central teaching it may seem that the Buddha has a negative attitude toward property—for property is always the “mine” of somebody. It would further seem that to achieve the goal of *nibbāna*, one must relinquish all property, not taking anything as belonging to “me” (nor thinking in terms of a “me” to begin with).

On the surface, the idea that one must let go of one’s property might seem to be a teaching that recognizes no personal property at all. The Buddha’s teaching to his followers that one should abandon grasp-

ing according to “me” and “mine” could be regarded as advocating a kind of utopian regime where everybody lives together peacefully without any concept of personal property rights. However, the Buddha did not intend to start a social or a political revolution. Although he advises his students to let go of attachment to personal property, he nowhere advocates any change in the political and legal structure of the society in which he happened to find himself. Furthermore, in the *Vinaya*, the second Defeat (*pārājika*) rule emphatically states that monks who take what does not belong to them and which costs more than five *māsakas* will be expelled from the Order, never to return. We do not know exactly how much a *māsaka* was worth, but we do know that it was enough for a thief who stole property worth more than that to be imprisoned, banished or executed (DK). It is clear, then, that the Buddha did not wish to create conflict between his congregation and the local political authorities. Monks were enjoined to keep within the bounds of the law wherever they might be.

The story behind the proclamation of this Defeat rule clarifies the Buddhist view of personal property. Once, the Buddha and his monks were staying in Rājagṛaha, which was ruled by King Bimbisāra. A monk took away pieces of wood that were kept by the king for emergency purposes. When the king found out about this he questioned the monk, who reminded the king that he had once said that he would give away wood and water to the monks who followed the Buddha for their own use. The king replied that what he had meant was that the monks were free to make use of wood and water in the forests, where no one claimed ownership of them. This, however, was a very different matter, because the monk had taken away pieces of wood that were specifically designated by the king as reserves for emergency uses. In this case, these pieces of wood certainly belonged to the king. Because he himself was a follower of the Buddha, the king eventually refrained from punishing the monk. However, when the people of Rājagṛaha learned about the inci-

dent they strongly reprimanded the monk and began to say that the followers of the Buddha were not worthy of respect and their status as *samaṇa*. When the Buddha found out about this, he asked one of his monks who was a judge prior to joining the Order what was the minimum price of property that would incur imprisonment, banishment, or death. The monk answered that the price was five *māsakas*. The Buddha then proclaimed that henceforth any monk who would take as his own any piece of property worth more than five *māsakas* would be forever banished from the Order and defeated as a monk (DK).

The story shows that the Buddha clearly accepted the right to property. The right of King Bimbisāra to the wood is clearly recognized, and the monk who took away the wood was strongly censured. Does this conflict with the teaching that one should let go of one's attachment to the "mine"? Following the laws of the land and the wishes of the political authorities is one thing, and maintaining the mindset of non-attachment to physical things is another. So, we can conclude from this episode that the Buddha does indeed fully accept the right to property, at least when it comes to the property of people outside of the order. The Buddha does not want his Order to create rifts or conflicts with the surrounding community, a commonly observed attitude on his part. However, when it comes to the Order itself, we know from the *Vinaya* rules that monks are not allowed to keep personal possessions beyond the merest necessities.

Perhaps we can use the Buddha's acceptance of the laws prevailing in the area where he and the monks reside as a basis for arguing that the Buddha would also accept intellectual property as a type of property to be protected by the *Vinaya* rules, especially the Second *Pārājika* Rule discussed above—or that he would have done so had he been acquainted with it. However, Ven. Pandita argues that the theft of intellectual property does not breach the Second Rule because the owner of the

property in question does not suffer any real loss through the illicit copying or unauthorized use of the protected copy or product (605). Ven. Pandita argues that any “loss” that results from a breach of IP protection is merely a *potential* one because the owner does not stand to lose any physical property that she already has in her possession. Therefore, the “loss” does not count as the kind that would incur a breach of the Second Defeat Rule. He argues that a merchant of software products, for example, would stand to gain a certain amount of money if a certain number of copies were sold. If some of those copies were illicitly downloaded without payment, the merchant would clearly lose out on some revenue. However, according to Ven. Pandita, the loss would only be a *potential* one because the merchant would never have been in possession of the exact amount of money in the first place (601).

Ven. Pandita is interested in the question whether a violation of someone’s IP rights constitutes a breach of the *Vinaya* rules. Is a monk who downloads a pirated copy of a movie for his personal consumption guilty of stealing, and thus defeated as a monk? Ven. Pandita does not think so, because downloading a movie only deprives the rights holder of *potential*, not actual, gains. However, I would argue that because each sale of a legal copy of the movie includes an amount of royalties paid back to the rights holder, each instance of downloading a pirated copy would actually *deprive* the rights holder of their royalties. If we imagine further that these royalties are the sole source of income for the rights holder, then a certain number of downloads of the pirated version would certainly result in the rights holder being poorer than he should be. In other words, downloading pirated copies would be tantamount to cutting off a source of income available to him, and this could well be his only source. To make someone *actually* poorer in this way sounds very much like theft and a breach of the Second *Pārājika* Rule. When the Buddha discusses the case of the monk who stole the wood reserved by King Bimbisāra, he asks one of his disciples who formerly had been a

senior judge to tell him what would be the normal legal procedure were the perpetrator not a member of the Order. When he learns of the law and its related punishment, he proclaims the Rule to prevent monks from committing the same violation in the future. This shows that the Buddha followed the locally prevailing law. It is probable, then, the law on IPRs being what it is now, that the Buddha would also forbid monks to violate it. Ven. Pandita may be correct that violating some parts of IP law do not necessarily mean violating the *Vinaya* rule, but as long as IP law remains the law of the land in which a monk resides, the monk has to follow it. The Buddha has clearly set a precedent in this regard.

In any case, the purpose of the present paper is not to investigate whether or not a violation of IPRs constitutes a violation of *Vinaya* rules. Instead my purpose is to analyze whether the very concept of intellectual property could be reformed or modified so as to be fully fair and beneficial to society.

The Role of Compassion for Modifying the Concept of IP

What we have learned from the previous section is that the Buddha did not abrogate the concept of property rights. Letting go of the attachment to the “me” and the “mine” does not lead to Buddhists abandoning property altogether and turning into economic anarchists. The story that led to the proclamation of the Second Defeat Rule shows us that the Buddha did not want to create any conflict between his Order on one hand and the surrounding community and its political authority on the other. Extrapolating from the Buddha’s time to ours, we see that Buddhists should also follow the law of the land regarding IPRs. However, this does not mean that we cannot use the insights of the Buddha’s teaching to propose a change to the system of IPRs itself. What I propose is that the concept of compassion (*karuṇā*) be applied in the following

analysis so that the whole system of IPRs becomes more equitable and more conducive to justice than is apparent currently.

The most prevalent theory of IP is utilitarian. That is, IP is justified because it is deemed to be a necessary factor in securing desired results that would not obtain if the system of IP were not in place to protect them.³ It is argued that IPRs are necessary to provide incentive to would-be innovators and to protect their investments and the fruits of their efforts. A criticism of this kind of theory is that it is difficult to distinguish clearly as to who is the real innovator. Because modern technology has become enormously complex and may involve a large number of collaborators who live in different countries all around the world, the innovation that is patentable today is very much the effort of a very large group. In this case it is difficult to pinpoint exactly who is responsible for the idea that leads to the innovation to be patented. One possibility, of course, is to grant the resulting IP right to the organization or corporation that manages the work of the whole group. This is certainly what is done routinely. The right is granted to the organization or corporation as if it were a single entity—this is justified, according to the

³ There are other theories of IP, the most important one after utilitarianism being deontology. The basic idea behind deontological theory is that IPRs are *rights*, and as such they inherently belong to individuals by virtue of their being rational and autonomous. There is not enough space in this paper to criticize the concept of IP rights as based on this theory, but any Buddhist critique of a theory that emphasizes the role of IPRs as rights would be quick to point out that the right to IP is an *acquired* right; that is, one is not born with these rights, but they attach to an individual as a consequence of doing something such as inventing a patentable new drug. Here the general contour of the Buddhist critique I am offering in the paper can be applied. In doing something that results in entitlement to an IP right, the innovator must enlist the help of a web of interconnected factors, which should be treated fairly through the benefits enjoyed by IP protection. For a defense of a deontological theory, see Merges; for a collection of essays dealing with the philosophy of IP, see the volume edited by Lever. A summary of all major theories of IP can be found in Fisher.

utilitarian theory, by the consequences or results that arise due to the enforcement of the IP regime. Instead of an individual benefitting from the fruits of his or her efforts, in reality it is the corporation that benefits from this work.

The efforts of corporations, then, may involve thousands of people working all around the globe. Someone in the corporation may conceive of a new idea, which may then be tested, examined, and turned into prototypes all upon the grounds of the corporation. But is it really the case that everything involving the conceiving and testing of the new product occurs within the confines of the corporation? Even if the corporation keeps its product development a closely guarded secret, it is always possible, and in principle actually necessary, that outside influences have a role to play. For instance, the person who conceived of the idea that led to the prototype may have gotten her inspiration from interacting with the outside world, such as the world of her family at home. Or, the prototype product may be tested by some members of the public outside of the corporation. On the surface, these interactions are mundane and usually not given much thought. However, the principle of IP according to utilitarian theory is that IP is there to protect the returns that would accrue as a result of the innovation. In short, the idea is to give credit to all to whom credit is due. But how exactly are we to measure to whom the credit is due and how much? Say that the innovator first conceived of an idea through talking with a small child, whose innocent idea the innovator developed into a full-blown blueprint. How much credit should the child receive? Or, say a pharmaceutical company develops a new molecular compound of a drug that could save millions of lives. The idea behind the molecule comes from a chemical found in a plant in a rainforest in a developing country. How much credit should the developing country receive? The plant itself might have been recommended to the innovator by natives living inside the forest. How much credit should they receive? Nothing lives inside a vacuum, and this

is especially the case in today's world where everything seems to be always interconnected through social media and communication technologies. Everywhere, ideas float around at the speed of light.

If the *raison d'être* of IPRs is to protect return of investment and to provide incentive, the protection should be broad enough to cover everyone who has contributed to the innovation. The discovery which leads to the patented product would not have been possible if not for the help and input from various sources outside of the corporation or the laboratory in which the scientist worked. In recognition of this web of interconnection and interdependence, credit should be allocated fairly across the whole network. The corporation depends upon factors such as the child, the developing country, and the natives of the rainforest just as much as it depends upon the investors who hold its stock. It is not fair that the returns on a new idea should go only to the investors. The returns that are promised by the IP regime should be broad enough to cover the entire network. In the case of the discovery of a drug based on a native medicinal plant, the natives who live in the area where the plant was found should be compensated as stakeholders who have been involved in the process of research and development from the beginning. The political authority with jurisdiction over the forest also is an indispensable player in this process and should share in the fruits. And so on.

Recognizing such a web of interconnection engenders compassion. Recognizing that one's very existence is possible only because of others, that one is actually "one and the same" with others around oneself, causes one to regard any interest that one might take to belong to oneself as extending to all others as well. The egoistic self—the "me" and the "mine"—is dissolved into the realization that what is "this" or "that" depends on their relations with others. They are empty (*suñña*) of

own-being, another way of expressing dependent origination (*paṭi-casamutpāda*) or interdependence (*idappaccayatā*).⁴

What I am arguing here is that corporations need to be compassionate in their work. This does not merely mean that the people who run the corporation should have compassionate feelings toward their fellow countrymen or human beings, but also that they recognize the objective relations that obtain between all the factors involved in intellectual property protection, and recognize that ultimately their own self-interest is involved in the need to be compassionate. Thus, executives of corporations should decide things in such a way that they take into account the fact that research and development for the patented product actually involves more factors than traditionally recognized. Corporations themselves, as owners of patents, should be rewarded, but because the work leading up to the patent involves many factors that lie outside of the corporations themselves, these factors should also be compensated for their role in the development. This recognition is based on an understanding of the interrelatedness of all things, which underpins the concept of compassion that I have been discussing up until now.

⁴ In *the Kaccānagotta Sutta*, Kaccāna comes to ask the Buddha what exactly is the Right View (*sammādiṭṭhi*). The Buddha replies that neither of the extremes, namely to hold that things exist or to hold that things do not exist, represent the Right View. The Right View is represented only by the realization of interdependence, namely, that ignorance (*avijjā*) is the condition for thought formation (*saṃkhāra*); thought formation is the condition for consciousness (*viññāṇa*), and so on (SN 12:15; II 16–17, in Bodhi 356). This is clear textual evidence that the Buddha equated emptiness and dependent origination; Nāgārjuna (*MMK XV: 7*) did not invent their relationship, but merely elaborated it. David Kalupahāna regards this passage as showing that the view promoted by Nāgārjuna and the view of early Buddhist canonical texts appear to be similar to one another and that the former's work is essentially a commentary on an early Buddhist teaching (26). However, this view is much disputed by Buddhist scholars. See, for example, Lang and Garfield's criticism of his view in the introduction to Garfield's translation of the *MMK*.

In this sense, then, compassion is not merely a subjective feeling, but a cognitive understanding that is a basis for action. In the sense that I am using it, the executives of the corporation do not even have to possess the feeling of pity or sympathy toward their fellow beings; they merely need to have the correct understanding that research and development leading up to a patent does not merely involve elements from within their own corporations. Because all things are interrelated in this way, to monopolize the benefits arising from the use of intellectual property rights would create an imbalance in the ecology of all the factors, so to speak. An example of this imbalance can be seen when there are protests and negative attitudes toward the corporation from those who have been adversely affected. The best way out would be for the corporation (as owner of the patent), user groups, and other stakeholders to negotiate and find the best solution for everyone. In other words, one cannot take an individual object to be capable of existing independently on its own without the relations of cause and condition to all other objects. Hence, the activity that leads to the invention of a new product or a new method which can be patented must also be empty and interdependent. It does not seem fair that the protection and return promised by the IP regime should belong only to the innovator or to a small group of people.

One problem that emerges from the argument that I am proposing is how to induce corporations to be compassionate. After all, compassion has to emerge willingly from the mind of the one who is going to be compassionate. It cannot be forced. For example, if there are legal requirements that corporations have to be compassionate and share some or most of their earnings to the stakeholders and the public in the way I am advocating here, and if the corporations comply with those requirements, then it cannot be properly said that the corporations have acted out of compassion. Compassion has to arise voluntarily. One is here reminded of Portia's words to Shylock in Shakespeare's *The Merchant of*

Venice: “The quality of mercy is not strain’d/It droppeth as the gentle rain from heaven/Upon the place beneath: it is twice blest;/It blesseth him that gives and him that takes” (Shakespeare, Act IV, Scene I). It might seem, then, that in recommending corporations to be compassionate, I am forcing them to be so through legal means. However, what I am advocating is rather that corporations should be compassionate of their own accord. The problem for activists, those who are intent on changing the world for the better, would then be how to change corporations so that they become voluntarily compassionate.

Here the Buddha, as always, has set a precedent. In propagating his teaching tirelessly for forty-five years, the whole of the Buddha’s career consisted in trying to change the minds of a countless number of people; everyone who met him was changed in one way or another, as we see in the *Sutta* stories. Obviously the Buddha did not forcibly change people’s minds. He never threatened those who did not believe him with hell fire or anything like that. On the contrary, he showed the way and used persuasion rather than threats to achieve his purpose. He appealed to the logical capabilities of those whom he was teaching so that change would come from inside of their own minds. That is the only way the Path can be followed and realized. In the same vein, then, corporations can be persuaded by reason so that they see for themselves that it is better for their own interests and those of others to be compassionate.⁵

Moreover, the view that compassion in Buddhist thought encompasses action means that one cannot be said to be actually compassionate merely because one has compassionate feelings, regardless of whether there is corresponding action. Of course we cannot control what is happening beyond ourselves, and thus there are always limits to what

⁵ I would like to thank an anonymous reviewer for the *Journal* for pointing out this important point.

we can do. Nonetheless, we can do what we can, given our limits, which vary according to context. At the very least, one can always perform acts of meditation, aiming to achieve Buddhahood in the future, so that one will be able to help all sentient beings. Such an action does not directly require the support of external circumstances. As long as one has the requisite ability and some amount of available time and space, one can do the meditation. But meditation is only one of the Six Perfections (*pāramitā*) that the aspiring Bodhisattva has to practice. First among the Perfections is generosity (*dāna*), which includes not only donation but also direct action performed by the practitioner to provide material help and benefit to those who need them. Thus, generosity born out of the desire to alleviate sufferings of beings is a part of compassion. It follows that direct action as part of the Perfection of Generosity also belongs to compassion. Consequently, for a corporation to be compassionate, it is not enough for the people who make decisions to have feelings; they need to take concrete action that arises out of the realization that all things are interconnected, including the actions that comprise research and development leading up to the registration of their patent.⁶

Practical Problems of Extending IP Protection

If the very concept of “those who are involved” is broadened, how exactly can we measure how much involvement various factors actually have in the process leading up to the patented product? How much, for example, should the drug company compensate an individual research

⁶ The idea here is akin to the distinction between “aspiring *bodhicitta*” and “engaged *bodhicitta*,” where the first is the subjective aspiration to achieve Buddhahood and the second refers to concrete steps taken by the Bodhisattva actually to achieve the goal (BC I: 15-19).

subject who risks her health testing the new drug when its effects on the human body are not fully known?

I suggest that the drug company should adopt an attitude that is sensitive to the needs of everyone in the world. It should seek out those who are directly involved, to the extent that they can be identified, and provide fair compensation to them. This should include a share of the royalties that would accrue once the drug is released to the market. For example, if the drug depends on a new chemical compound that the researcher has found in a medicinal plant in a rainforest, the tribe that has provided the researcher with the suggestion as to the efficacy of the plant should be taken as a stakeholder in the success of the drug and the benefits shared out to them accordingly. Each participant in the clinical trials should be similarly included.

What should the company do for those who cannot be identified but who clearly had a role in the development? It should share the benefits of the drug in such a way that the whole community benefits. Because the world has become more interconnected, the *community* in question may well span many parts of the globe. The drug should be priced in such a way that the rest of the world community can afford it. The company should also design mechanisms through which the drug can be used more effectively. It can engage in health promotion schemes to enable the population in certain areas to learn how to improve their health and well-being on their own, or it can work with national and local governments to establish more beneficial health care policies.

But the burden should not be only on the drug company. The global community should also be doing something in return for the company. The company should gain reasonable profits and the community should establish a fair environment for the company to operate in through the enactment of clear and consistent rules and regulations, and

participation in research and development activities. Compassion needs to go both ways.

Objections and Replies

A possible rejoinder to this proposal might be that in widely disseminating the stakeholders in IPRs, the innovator—the one who first conceives of the idea, is responsible for the research, and who applies for the patent—might lose out because the benefits are spread too thin. The proposal of spreading the benefits around in this way might even look like a tax on the innovator that could result in a loss of incentive for future research and innovation. However, the proposal offered here does not force the innovator to give up his rights to intellectual property. He can keep his patent, and the patent can be valid for as long as twenty years, depending on how the system is agreed upon.

Another problem is distinguishing between those who first conceive of an idea and those whose role seems to be merely supportive, such as facilitating the workspace of the innovator but having no actual role in the process of development itself. At the present time, IPRs are often assigned to the latter. In most cases of large scale innovation, the team of scientists who toil in their laboratories might not own IPRs at all. Rather, the rights belong to the corporations themselves. I would argue that if it is possible for the employing corporation to own the rights even though the top management at the corporation might not have had a hand in the actual experiment and discovery, it should also be possible for larger contextual elements to have a share in the ownership. Thus, even the utilitarian theory (which is still the dominant theory cited by lawyers and courts) seems to support expanding the circle of who actually plays a role in the discovery.

Conclusion

Should companies hold exclusive legal rights over their patents and charge whatever prices they can for their products? Or should they be compassionate and share the benefits of their products equitably? It is the latter scenario which offers a better chance for a truly sustainable world.

Abbreviations

BC *Bodhicaryāvatāra*

DK *Dhaniya Kumbakāraputta*

MMK *Mūlamadhyamakakārika*

SN *Saṃyutta Nikāya*

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