

# *Adinnādāna in Pañcasīla and the Infringement of Academic Works*

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## **Introduction**

The layperson's *Vinaya* in general covers five precepts or *Pañcasīla* which forms the basis for good conducts. The five precepts are 1) *Pānātipātā veramaṇī* - to abstain from killing, 2) *Adinnādāna veramaṇī* - to abstain from stealing, 3) *Kāmesumicchācārā veramaṇī* - to abstain from sexual misconduct, 4) *Musāvādā veramaṇī* - to abstain from false speech, and 5) *Surāmweayamajjapamādaṭṭhānā veramaṇī* - to abstain from intoxicants causing heedlessness (D.III 11/315, Vbh. 35/703).

Of the five precepts, the second precept addresses the issue of the property of others, i.e. to abstain from taking what is not given by stealing. The property here consists of two types: movable property, or property that can be moved from one location to another, e.g. instruments, animals, and vehicles. Immovable property includes property that is fixed or cannot be moved, e.g. land, buildings, and trees (Text Committee, Mahamakut Buddhist University, 2007: 16). With the evolution of the world, however, we are now dealing with a new kind of property, i.e. "intellectual property," which refers to the creation of the mind and intellect, especially

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copyrighted work, including books, pamphlets, writings, or printed matters (Copyright Act, Section 4).

Academic works in formats such as research, thesis, book, or academic text all involve intellectual efforts and knowledge of their authors. Problems may arise when another person makes use of a part or all of an author's work without citing references and/or claiming it as his/her own. Could this be called *Adinnādāna* in Buddhist terms? Originally, the term was used to refer to movable and immovable properties and did not cover intellectual property of copyright or academic nature. What are the criteria in Buddhism to decide whether or not the copyright of an academic work is violated? These two problems form the topic of this study which consists of five parts:

- 1) Definition and meaning of academic works
- 2) Legal infringement of academic works
- 3) Definition and meaning of academic works in Buddhist terms
- 4) Infringement of academic works in Buddhist terms
- 5) *Adinnādāna* in *Pañcasīla* and the infringement of academic works.

## **Definition and meaning of academic works**

Academic works are considered a kind of intellectual property. In general, there are two kinds of intellectual property: 1) copyrighted materials which covers, among others, literary work, artistic work, dramatic work, musical work, cinema, and photography; and 2) industrial property which covers, among others, inventions, trademarks and industrial designs (World Intellectual Property Organization, Reference in Chaiyot Hemaratchata, 2007: 18-19). Academic works are considered literary works with copyright in the intellectual property scheme of things. In the Copyright Act B.E. 2537 (1994), literary work is defined as “any kind of literary work including books, pamphlets, writings, printed matters, lectures, sermons, addresses, speeches, and computer programs”.

Academic works have two senses. The first is the one we are often familiar with, such as ideas, inventions, and poems. The second sense is

a legal one. Academic works<sup>1</sup> are rights that come with products of the mind rather than the products themselves. These are legal rights to the intellectual products/creations, and they are exclusive rights (Phillips and Firth, 1990: 3-4).

Evidently, the first sense of academic works focuses on the products or objects that come into being as a result of the intellect or creativity of the academics in such forms as books, poetry, and pamphlets. Admittedly, academic works are not directly tangible products, but they are the result of the intellectual processing of information or knowledge. We can even call them “concrete forms of the intellect” or “intellectual expression” or “mental products”. The second sense, on the other hand, focuses on the legal rights of the ownership of information, knowledge, ideas or intellect resulting in academic products or works rather than the products per se. These are the exclusive rights of the creation of the mind together with the commercial rights that come with it (Wikipedia, intellectual property). For example, Mr. A. wrote a book on Buddhism entitled *Adinnādāna and the Infringement of Academic Works*. All the information, ideas or knowledge in that book constitute an academic work, the copyright of which belongs to Mr. A. alone. He is, therefore, the owner of that piece of academic work, and is entitled to all the legal rights as a result of his intellectual effort. Such rights include the right to exploit his academic work in any form he wants, such as turning it into a book form, reproducing, adapting, and communicating it to the public. He can sell, grant, or transfer the right to another individual or agency for further exploitation. He also reserves the right to stop or prevent another person from any violation without prior permission. All these rights come with the created academic works.

Thus, academic works as concrete results of information, knowledge, idea and intellectual creativity are protected as copyrighted literary works that belong to their rightful owners for a certain period of time as prescribed by the law. Within the prescribed time, no one can violate this right. The

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<sup>1</sup> The researcher has taken the definition and meaning of “intellectual property” from Jeremy Phillips and Alison Firth (1990) and applied them to “academic works”.

essence of the academic works is idea and intellectual creativity, something intangible but resulting in a product that the law recognizes as an intellectual property.

An academic work that earns the intellectual property right as a literary work is characterized by four features:

1.) Expression of idea: An idea must be communicated to others. It must not remain just an idea in the mind of the owner. For example, Mr. A is an academic in Buddhism. He has an idea to write a book on *Adinnādāna and the Infringement of Academic Works*, but does not put anything down on paper or in other forms of record. The book plan is in his mind. It is only after he has recorded the material on paper or other mediums, e.g. tape recorder, or has communicated it to the public, say, in a lecture or presentation that the action can be considered to constitute an expression of idea, thus earning the right to be protected (Oraphan Phanatphatthana, 2006: 38).

2.) Originality: As the copyright of the academic work is a reward for its creator, the work must reflect his knowledge, expertise, skills, labor, judgment and initiative. It must not be copied from another source. This principle is known as “originality” (2006: 33).

3.) Legally recognized type of work (2006: 43): The work must be recognized or protected by the Copyright Act, Sections 4, 6)<sup>2</sup>. Under the Thai law, an academic work is a type of literary work to be protected by the Copyright Act, B.E. 2537 (1994).

4.) Non-illegal work: Although the Thai Copyright Act B.E. 2537 (1994) does not specifically mention whether or not the work that is prohibited by law, goes against law and order or good moral conducts, e.g. work that instigates unrest in the country or is pornographic in nature, will be protected by the law, there is a verdict No. 3705/2530 given by the court that the video tape showing part of a sexual intercourse between a man and a woman is pornographic and not a creative work under the Copyright Act B.E. 2521 (1978) (Oraphan Phanatphatthaa, 2006: 38).

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<sup>2</sup> For details, see Phinit Thipmani (2008).

This indicates that for an academic work to be recognized as intellectual property and given a copyright it must not contain elements prohibited by the law or go against the law and order or good social moral conducts.

Therefore, an academic work lacking any one of the above features shall not enjoy the copyright as legally prescribed.

## **Legal infringement of academic works**

When an academic has created his work in any field and has it recorded in one form or another, e.g. computerized, typewritten, or recorded on paper, he is legally recognized as the author with ownership of copyright of the work (Copyright Act, Section 8) without the need to have it registered, express the reservation of the right, or follow any formal procedure (Somkhit Bangmo, 2006: 194). The author's right in the ownership of his academic work covers two aspects:

### **1.) Moral rights**

Moral rights are individual rights of creators to have their reputation protected from any possible negative action (Phillips and Firth, 1990:205). In the Berne Convention for the Protection of Literary and Artistic Works 1886, revised in Paris 1971, or Berne Convention or Paris Act, Article 6 *bis* mentions two kinds of moral rights: 1) the author has the right to be named as the author or creator, and 2) the creator gets to prevent any action likely to distort, shorten, adapt or do any other action that would damage his reputation and dignity (1990: 207). The Thai law offers similar protection. In Copyright Act B.E. 2537 (1994), the provision of Section 18 reads:

The author of a copyright work by virtue of this Act is entitled to identify himself as the author and to prohibit the assignee or any person from distorting, shortening, adapting or doing anything with the work to the extent that such act would cause damage to the reputation or dignity of the author. When the author passes away, the heir of the author is entitled to litigation for the enforcement of such right through the term of copyright protection, unless otherwise agreed in writing.

Besides the moral rights, the Thai Copyright Act also provides economic rights at the same time. It can be observed that these rights enjoy the same privileges as other properties in general. In other words, the author can give authorization to another person to exploit his rights through selling or transferring of copyright as well as through inheritance. The transfer of copyright, if not as inheritance, must be done in writing with signatures of the assignor and the assignee (Copyright Act, Section 16-17).

## 2.) Economic rights

Copyright owners have the exclusive right in the commercial exploitation of their works as prescribed by law (Phillips and Firth, 1990: 205). The owners have the exclusive right to do anything with their work in two ways:

### 2.1 Positive rights

The copyright owners or copyright holders have the exclusive right to do anything with the works as prescribed by law. In Copyright Act B.E. 2537 (1994) Section 15 specifies such exclusive rights to include:

- a. Reproduction or adaptation
- b. Communication to the public
- c. Letting for hire of the original or the copies of a computer program, an audiovisual work, a cinematographic work and a sound recording
- d. Giving benefits accruing from the copyright to other persons
- e. Licensing the rights mentioned in (a), (b) or (c) with or without conditions, provided that the said conditions shall not unfairly restrict the competition.

For instance, Mr. A. wrote an academic book on writing pads. He would be its copyright owner and have the exclusive rights to do the following:

- i.) Reproduce, e.g. photocopy the text, or adapt, e.g. having it translated in another language.

- ii.) Communicate to the public, e.g. read it to an audience or have it published for sale or for distribution.
- iii.) Give benefits deriving from the copyright to another person, e.g. transfer the copyright to another party.
- iv.) Give authorization for others to reproduce, adapt or disseminate the work on his behalf (Oraphan Phanat-phatthana, 2006: 25-26).

## **2.2 Negative rights**

Negative rights refer to the rights to prohibit, prevent or keep away people from committing infringement except when they are authorized by the right holder or the law (exceptions specified by law), including the right to receive compensation for damages in civil and criminal litigations. All the actions listed in Section 15(5) without proper authorization are regarded as infringements. So, reproducing and adapting someone else's work, including communicating it to the public, are infringements of copyright (Copyright Act, Section 27).

In addition, economic rights are in evidence when the author utilizes the copyright work for commercial purposes in two ways. First, the author reproduces the academic work in a book form and sells the product himself. Second, if the author does not want to do this himself, he can enter into an agreement authorizing another interested party to make use of it through reproduction or publication on his behalf. The author can ask for a certain fee for the use of such right as remuneration (Chakkrit Khuaphot, 2001: 4). In other words, this involves a selling of right for production and distribution to another individual or organization to use the right instead.

Thus, legal infringement of academic works refers to any action by an individual that the law says causes damage to the reputation or dignity of their author through such acts as adaptation, inordinate shortening, or claiming it as his own (moral rights). On the other hand, such action can result in lost benefits or revenue that the author is entitled to have from his copyrighted work when it is reproduced, adapted, or communicated to the public without authorization (economic rights).

In view of a number of infringements of academic works according to the Copyright Act B.E. 2537 (1994), it is useful to show what form the infringement can take by comparing it to general property (2001: 5-8):

a.) Intent of copyright protection:

In general, protection of property is a moral obligation of the State to provide for its citizens. The protection of academic works as copyrighted intellectual property is also necessary for moral and economic reasons. Today the economic consideration seems to be more prominent than the moral argument.

b.) Object of right:

In general, property may be tangible or intangible. An academic work as copyrighted intellectual property is an object of right with no physical form. It is manifested in the form of idea, expression of idea, or information of some kind. In addition, it must be an intellectual creation by an individual or group of individuals, while property in general could come into being by individuals, animals or natural means.

c.) Nature of right:

For physical property, the right of ownership is tied to the property concerned. Whenever the property (object of right) is lost or destroyed or has disappeared for whatever reason, the right to ownership will come to an end. This is different from an academic work as copyrighted intellectual property, an object of right without a physical form. The right of the academic work is a legal right separate from the property right. For example, the fact that Mr. Daeng owns a copyright to a book does not make him the owner of the right to a specific book. Rather, his ownership is in the contents and the expression therein. Let's explore the situation further. Mr. A. wrote a book which was published for commercial purposes. Mr. B bought a copy from a bookstore. He owned that particular copy, but the right of ownership still belonged to Mr. A. In legal terms, this means that Mr. B. had the right to read, use, resell or destroy that copy, including the right to take action against another person who stole it from

him. However, he had no right to re-publish the book. If someone had the book re-published for commercial purposes, Mr. B had no right to complain about him, as the right to ownership was with Mr. A, the author. The fact that an object of right under the copyright law has no physical form implies that the legal right is separated from the object that takes shape from it. The fact that this object is destroyed or lost does not have any effect on the right to the copyrighted academic work. In other words, the right to an academic work will not be lost with the object under which the work takes shape.

d.) Term of protection:

The ownership of property in general has no fixed term of duration. The owner has the right to the property until it no longer exists. As far as time is concerned, the only way that the owner will lose the right to ownership is when it is taken by someone else through adverse possession (Civil and Commercial Code, Section 1382). The copyright law, on the other hand, fixes the term of copyright protection of the academic work for the life of the author and fifty years after the author's death (Copyright Act, Section 19). The reason for fixing the term of protection for academic works is that it shares the characteristic of the exclusive right to the knowledge contents. If the exclusive right has no fixed term, it will adversely affect the public. The protection of the academic works is provided to enable the exchange of interests between the right holder and the society. The exclusive right that the society is willing to offer in exchange for certain gains should not last too long, but it should be long enough for the right holder to be willing to disclose his knowledge for the purpose.

Thus, the infringement of academic works is different from infringement of property in general in four ways: intent of protection, object of right, nature of right, and terms of protection. Such infringement does not constitute an act of stealing or robbery of copyright; it is called “infringement of copyright” or “infringement of academic works”.

## Definition and meaning of academic works in Buddhist terms

Before giving the definition of academic works in Buddhist terms, one must be clear about one thing. Academic works are a type of intellectual property. Both terms are modern coinages and do not exist in the Buddhist scriptures. The attempt to find the definition can be done by comparing it to something similar, especially in the context of modern Thai society. First, let's consider a general meaning of “property”, intellectual property, and finally academic works in Buddhist terms.

The word “property” or “asset” is equivalent to Pali *Dhana* which means wealth, treasure, money, property. The word can be analyzed (Krommaphra Chanthaburinarnat, 1977: 377) thus: “*Dhanitabbam Saddāyitabbanti Dhanam*” meaning “what one should utter (appreciatively) that it belongs to one”. In other words, one should proclaim with pride one's ownership of things or *Dhana* (*Dhana* means to utter) (Phra Mahā Moggallāna, 2004: 608, and Phra Thammakittiwong, 2007: 333). Property here covers a wider sense, because it means everything that is joyful and brings joy to a person. The *Tepitaka* mentions two kinds of property:

1.) Public property – refers to general things, including fire, water, kings, bandits, and heirs unworthy of love.

2.) Non-public property – refers to non-general things, including fire, water, kings, bandits, and heirs unworthy of love, i.e. *Saddhā* (*Saddhā-Dhana*), *Sīla* (*Sīla-Dhana*), *Hiri* (*Hiri-Dhana*), *Ottappa* (*Ottappa-Dhana*), *Sutta* (*Sutta-Dhana*), *Cāga* (*Cāga-Dhana*) and *Paññā* (*Paññā-Dhana*). These are collectively called “*Ariya-dhana*” (A.IV *Sattakanipāta* 23/7). It puts human information, knowledge, idea or intellect in two categories:

2.1 *Sutta-Dhana*: *Dhana* is listening: listening to a lot of *Dhamma*, accurate memory, fluency, internalization, and insight into the knowledge by virtue of *Dīṭṭhi*. Buddhism calls a person with this kind of *Dhana* a *Bahussuta*.

2.2 *Paññā-Dhana*: *Dhana* is *Paññā*, i.e. right knowledge and understanding, insight into *Tilakkhaṇa*, and ability to destroy *Kilesa* and bring an end to *Dukkha* (A.III *pañcakanipāta* 22/47).

In *Āṭhakathā* to *Dhananiya Sutta* attempts were made to differentiate *Dhanain* to five types:

- 1.) *Thavara-Dhana* or immovable property, e.g. land, farm, plantation and building
- 2.) *Jangama-Dhana* or walking property, i.e. property that can move by itself, e.g. male and female slaves, elephants, horses, poultry, and pigs
- 3.) *Sanhārima-Dhana* or movable property, e.g. money and gold
- 4.) *Āṅgasamadhana* or property with all organs intact, the source of art<sup>3</sup>
- 5.) *Anugāmikadhana* or property that accompanies a person in every life and every *Bhava*, e.g. merits or *Kusala* that a person makes from practicing *Dāna*, observing *Sīla*, and doing *Bhāvanā* (*It. A* (Pali) 21/38, *It. A* (Thai) 41/60). It categorizes information, knowledge, ideas or human intellect in two ways: (1) *Āṅgausama-sabhāva* (*Āṅgasamadhana*) i.e. property with all organs intact, the source of art or property that a person carries on himself, e.g. knowledge and arts, and (2) *Anugāmika-sabhāva* (*Anugāmikadhana*) or property that accompanies a person in every life and every *Bhava*, e.g. merits or *Kusala* that a person makes from practicing *Dāna*, observing *Sīla*, and doing *Bhāvanā* (*It. A* (Pali) 21/38, *It. A* (Thai) 41/60).

It can be seen that non-public property, known as *Ariya-Dhana*, separates knowledge gained from study (*Sutta-Dhana*) from *Paññā*-based knowledge (*Paññā-Dhana*). The Commentary to *Dhananiya Sutta* also differentiates knowledge-based property (*Anugāmikadhana*) from moral or *Kusala* property (*Anugāmikadhana*). However, when one synthesizes the contents, one finds that *Āṅgasamadhana* and *Sutta-Dhana* have the same meaning. They refer to knowledge of all fields. On the other hand, *Paññā-Dhana* can be synthesized with *Anugāmikadhana* except that the word *Anugāmikadhana* covers a wider meaning. *Anugāmikadhana* means

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<sup>3</sup> Thai Tipitaka of Mahachulalongkornrajavidyalaya version translates *Āṅgasamadhana* as “property that one carries on oneself,” e.g. knowledge and arts (Kh.A (Pali) 8/194) (reference in Footnote 2 Kh. (Thai) 25/1).

property in the form of merits or *Kusala* that accompanies a person in every life and every *Bhava*, while *Paññā-Dhana* refers specifically to correct knowledge in line with morality. Here, only some merits or *Kusala* can be called *Paññā*. *Paññā-Dhana* also includes *Paññā* of *Lokuttara* type, which is able to put an end to *Bhava* and *Jāti*. This goes to show that Buddhism recognizes knowledge and intellect as a kind of property, calling it “*Ariya-Dhana*” or most noble treasure, because it leads to all kinds of property (D.III A. (Thai) 16/378), i.e. wealth (*Bhoga-Dhana*), happiness (*Sagga-Dhana*), *Brāhmaṇa-Dhana*, and *Nibbāna* (*Nibbāna-Dhana*), the supreme of all the *Dhana* (*Sumangalavilāsinī*, 3/2/378-379, reference in Panya Chaibangyang et al, 2005: 147).

Knowledge and intellect as part of *Ariya-Dhana* are different. *Sutta-Dhana*, knowledge gained from study, has two levels (DIIIA. (Thai) 16/739):

1.) Knowledge at the *Lokiya* level (worldly *Sutta*), i.e. knowledge gained from listening, attending lectures and sermons, reading, and study, including learning arts, sciences, and crafts that are related to earning a livelihood and conducting other worldly enterprises.

2.) Knowledge at *Lokuttara* level (*Dhamma Sutta*), i.e. knowledge becoming the *Ariya-Sāvaka* or knowledge necessary for every individual to live a virtuous life and be able to make good use of what they know, including vocational skills, in such a way that benefits self and others. This kind of knowledge will help the person to keep away from all bad things and fill in the gaps of other sciences. It is a knowledge that makes an ordinary individual a noble being (Phra Dhammapitaka, 2003: 420-1).

*Paññā-Dhana*, on the other hand, is wisdom, correct and complete understanding of the truth. It too has two levels:

1.) Knowledge at the *Lokiya* level, i.e. all-round comprehension, understanding, or insight into what is going on in the world, including a clear understanding about one’s career, politics, and economy. A person with this kind of knowledge is able to differentiate, sort out, and decide right from wrong.

2.) Knowledge at *Lokuttara* level, i.e. understanding of the world according to the truth (*Ariyasacca*), reasoning faculty not governed by *Kilesa* or *Nivarana*, wisdom to appreciate *Tilakkhaṇa* and the nature of all things that occur, stay, and eventually decline, or awareness of common perception of the world and life. This knowledge can lead to a temporary and permanent end of *Kilesa*, practically leading to the end of suffering (2003: 422-33).

There lies a clear difference between *Sutta* and *Paññā*. *Sutta-Dhana* is knowledge gained from study or experiences, including seeing, reading, writing and listening. Though based on certain understanding, the knowledge is obtained from memorization and understanding based on the opinion or experience of other people or sources. Such process involves external factors bringing in knowledge and understanding of things. In his *Visuddhi-Magga*, Buddhaghosa Thera puts this kind of knowledge at the levels of *Saññā* (perception) and *Viññāṇa* (consciousness) below the *Paññā* level. For comparison purposes, let's say, we have three people looking at a coin. At the *Saññā* level, it is as if an innocent child sees only its shape, length, roundness, color and patterns, and at the *Viññāṇa* level, it is as if a villager sees not only its patterns and shape but also its significance as a medium for exchange of goods. Still, he cannot tell whether it is a genuine or fake coin or what it is made of. At the *Paññā* level, the knowledge is complete and clear as far as *Saññā* and *Viññāṇa* are concerned, including the ability to differentiate and decide right from wrong, leading to the path of *Magga*. The person with this kind of knowledge is like a treasurer who knows everything there is to know about the coin whether by sight, sound, smell, taste, or touch, including the maker of the coin or the place where it is made (Buddhaghosa Thera, 2003: 711).

*Paññā* as used in intellectual property refers to all human creative works as products for commercial purposes protected by law. It includes all intellectual or mental products, such as knowledge, ideas, inventions, literary works, and arts, with commercial or economic benefits recognized or protected by law. They are all *Paññā* in the sense of intellectual property.

A close look at knowledge and wisdom used in *Ariya-Dhana* and intellectual property reveals that Buddhism recognizes knowledge (*Sutta-Dhana*) and wisdom (*Paññā-Dhana*) as property or noble treasure. It may not actually use the term “intellectual property” but call the matter “*Ariya-Dhana*”. With regard to academic works as copyrighted intellectual property today or, more specifically, all knowledge and academic ideas created by academics, some can be called “*Sutta-Dhana*” and “*Paññā-Dhana*” at the *Lokiya* level. These include academic products in various fields created for commercial purposes as part of good and honest modes of livelihood. Academic works as intellectual property in Buddhism are characterized by two important elements:

Firstly, academic works mean knowledge and ideas from study or experience; they are referred to as *Sutta-Dhana* at the *Lokiya* level. Some of academic works with intellectual property right belong to this category. They differ from the Buddhist tradition in that they are more specific, with concrete manifestation of contents, or in the form of products for commercial purposes, protected by law (Hornby, 2001: 623). Such specificity does not turn correct and good academic knowledge in a specialized field into *Micchādīṭṭhi* (not *Sutta-Dhana* at the *Lokiya* level). On the contrary, it helps to make knowledge more concrete and more beneficial to society. On the other hand, if what is presented is not correct knowledge, causing damage to self and society, in Buddhism it will not be considered *Sutta-Dhana* at the *Lokiya* level. In addition, *Sutta-Dhana* at the *Lokiya* level must be governed by *Paññā* to ensure that the knowledge is put to good use. Such *Paññā* is called *Sutamayapaññā* (wisdom resulting from listening) (D.III 11/305); otherwise, the academic work will become *Ariya-Dhana* at the *Lokiya* level, while *Sutta-Dhana* at the *Lokuttara* level is beyond the scope and meaning of academic works in various fields as seen today.

Secondly, academic works mean morally correct knowledge and ideas leading to *Kusala* or virtue; they are referred to as *Paññā-Dhana*, or more specifically *Paññā* at the *Lokiya* level (knowledge at the *Kilesa*-related level). Modern academic works that enlighten the reader, enabling him to differentiate right from wrong, sort out his daily problems,

understand life and the world as they are to the extent that he can stop *Kilesa* even temporarily, or live a happy life in the world, are considered *Paññā-Dhana* at the *Lokiya* level. *Paññā-Dhana* at the *Lokuttara* level (*Paññā* that can permanently put an end to *Kilesa*) is *Paññā* as found in *Aṭṭhangika-magga*, *Phala*, and *Nibbāna* (*Kvu*. (Pali) 37/587, *MIII A*. (Pali) 9/563, *MIII A*. (Thai) 22/123). They are considered *Ariya-Dhana* that is beyond the scope and meaning of academic works in various fields as seen today. Of all *Ariya-Dhana*, Buddhism considers *Paññā-Dhana* as the most noble, because when all beings are well-established in *Paññā* and fully observe the three aspects of *Sucārita*, five precepts of *Sīla*, and ten precepts of *Sīla*, they will attain to *Sagga*, equipped with *Sāvaka-Pāramī-Ñāṇa*, *Paccekabodhoñāṇa*, and *Sabbaññutañāṇa* (*DIII A*. (Thai) 16/378-379).

Thus, those correct and virtuous (*Kusala*) academic works in one's field of specialization that can promote a correct and virtuous way of life or can be turned into commercial products for the good of society in such forms as books, bulletins, journals, research works, and publications, are all considered *Ariya-Dhana*, especially as they are not incorrect, harmful and damaging to self and others. They could be *Sutta-Dhana* or *Paññā-Dhana* at the *Lokiya* level, the level that gives rise to happiness, commercial prosperity, and social good.

### **Infringement of academic works in Buddhist terms**

Having established that academic works may be recognized by Buddhism as intellectual property, we now turn to consider whether Buddhism recognizes any right to that property. When a person has the right to his works, other persons may not violate it. More simply put, the issue is whether a person has the right to own his intellect, knowledge or ideas when Buddhism considers that everything that exists has always been there in nature. It does not matter whether or not the Buddha came to this world, everything has always been there. Only after His birth was He enlightened about the nature of things or *Dhamma* (*A. Dukanipāta* 20/137). This shows that all *Dhamma*, whether *Lokiya* or *Lokuttara*, already existed.

They are called “*Dhammaniyāma*”<sup>4</sup>, i.e. all things are in nature and are owned by nobody. Only after the Buddha was enlightened did he propagate them. He discovered and owned all the knowledge. This can be compared to philosophers and scientists who discovered theories and announced them to the world, e.g. Plato’s theory of Form, Sir Issac Newton’s law of gravity, and Albert Einstein’s theory of general relativity. All these ideas and laws already exist in nature and were discovered by these philosophers and scientists who made them known to the world. The society, therefore, agrees that the first persons to discover them should be their owners. Similarly, the Buddha is looked up to as the owner of the *Dhamma*, the result of his Enlightenment and an insight into all *Sacca*.<sup>5</sup> This is simply an act of respect for the person who discovered the truth and made it known to the world. Anyone who holds a different view than that of Buddhism may be regarded as holding an incorrect view (*Micchādītti*). For instance, in the Buddha’s time there were six famous schools of thought. e.g. Pūrana Kassapa, Makkhali-Gosāla, and Ajitakeskambala<sup>6</sup> who held contrary views to the Buddha’s *Dhamma Vinaya*. When his disciples preached sermons to the people, they would cite the Buddha as their reference – “the Buddha says ...”. When other doctrines wanted to

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<sup>4</sup> *Dhammaniyāma* is the general natural law consisting of five types: (1) *Utu-niyāma* referring to physical inorganic order, e.g. breeze, rain, sunshine, and night, (2) *Bija-niyāma* referring to physical organic or biological order, e.g. wheat giving rise to wheat products, sweet plants giving rise to sweet products, and bitter plants producing bitter fruit, (3) *Cita-niyāma* referring to psychic law governing the work of the mind and senses, (4) *Kamma-niyāma* referring to the moral laws of *Kusala* and *Akusala*, (5) *Dhamma-niyāma* referring to the natural law of all the Buddha’s, e.g. all the worlds and elements shook when the Buddha was conceived in his royal mother’s womb (*DII A.* (Pali) 5/44-45, *DII A.* (Thai) 13/100-1). Specifically on *Dhamma-niyāma*, Phra Brahmagunaphorn (P.A. Payutto) (2008: 166) adds further explanation to the Commentary that it is the natural order of relationship and general law of cause and effect of all things.

<sup>5</sup> i.e. *Dhammasāmī* (M.I 12/203, S.I 18/116) and “Nobody in the world can deny that the Buddha, the owner of *Dhamma*, came by the righteous means to the enlightenment and that *Dhammacakka* is the most noble of *Dhamma*” (*Nett.A.* 9/63, *Nett.Vbh.* (Pali) 9/93, reference in Footnote 3 to *Vin.M.* (Thai) 4/17/24).

<sup>6</sup> For more details, see D.I 9/165-181.

refer to the Buddha's teachings, they would say "Samana Gotama teaches thus ...". This is how respect and honor were paid to the Buddha's *Dhamma*. So, infringement of academic works in Buddhism means violation of the *Dhamma Vinaya*, the Buddha's teachings.

With regard to the protection of academic works as intellectual property, there is clear evidence in Buddhism. The religion came into being in ancient India at the time when so many doctrines were propounded, each with its own approach. Buddhism was another approach. When someone else preached it to others, claiming that it was theirs, or mistakenly referring to it, the action was called "making a false claim of the Buddha's words" (*Vin.M. 5/290*) or "falsification of the *Dhamma* (reference in Footnote 2 to *Vin.Mahāvagga* (Thai) 2/423). In modern parlance we could call such act as "infringement of the Buddha's academic works (*Dhamma Vinaya*)". There was an incident in which a Buddhist monk by the name of Ariṭṭha believed that he completely understood the Buddha's teachings, saying "I have understood the *Dhamma* taught by the Buddha. I know that even the *Dhamma* that He has declared harmful cannot cause harm to those who indulge in them". When other monks heard this, they tried to warn him against such a belief, but he would not listen or renounce such incorrect view. The monks then reported the matter to the Buddha who summoned a meeting, admonished the culprit, and imposed a disciplinary provision.<sup>7</sup> Evidently, Ariṭṭha's words falsified the teachings of the Buddha who

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<sup>7</sup> Ariṭṭha was a learned person and a preacher who partly understood *Antarayikkadhamma*. Since he was not proficient in the *Vinaya* matter, after a series of retreats he came to a conclusion that a number of lay people who still indulged in sensual pleasures could become *Sotāpanna*, *Sokadāgāmī*, or *Anagāmī*. On the other hand, monks who can perceive *Rūpa* through sight ... and physical touch are allowed to use soft clothes. If this is allowed, why can't one touch a woman through all the senses? This surely must be right. He then developed a misguided notion in contrary to *Sabbhaññutaññāna*, saying that "Why did the Buddha prescribe a strict rule of *ukkhepanīyakamma* in something that is harmless?" In this way, he pulled down the aspiration of noble people, objected to the wisdom of those with perfect knowledge of things, put thistles and thorns in the way of *Ariyamagga*, and destroy the realm of the Buddha's disciples, saying that "*Methunadhamma* is no wrong" (*Vin.Mahāvagga A. 2/417, M.I (Pali) 2/234*, reference in footnote 3 to *Vin.Mahāvagga* (Thai) 2/417).

never said that sensual pleasure or sexual intercourse was not sinful. The measures that He adopted to protect His teachings is *Vinaya* rules. He, therefore, prescribed the eighth *Sikkhāpada* (a disciplinary rule) of *Sappāna Vagga* concerning the *Pācittiya* that “When a monk falsifies the *Dhamma Vinaya*, other monks should warn him against it. If he refuses to listen, even after the monks had requested him to do so three times, he is given a *Pācittiya*” (*Vin.Mahāvagga* 2/418).

Monks or individuals who falsified the Buddha’s teaching are considered to hold a wrong doctrine and commit a sin. There was the incident of Sāti Thera who held a false view that a man’s consciousness was *Attā* and continued without break of identity, contrary to the Buddha’s teachings that consciousness is *Anattā*. The Buddha admonished him thus:

Foolish man, if this is the *Dhamma* that you know,  
how can you teach it to others? Consciousness or *Viññāna*  
needs certain conditions or *Paccaya* for existence. I have said  
earlier that ‘without *Paccaya* there ceases *Viññāna*.’ You have  
misquoted me and made this yourself. You will not encounter  
much good because of your false belief. Foolish person, your  
view is not meant for good things but for long suffering.

(M.I 12/398)

In this incident Sāti Thera committed two offenses: falsifying or infringing the Buddha’s intellectual works and holding a false belief. Holding a false belief is considered an unwholesome act, a sin, a spiritual misconduct, leading to a low spirit. This is one of the measures taken to protect the *Dhamma Vinaya*, the Buddha’s intellectual work.

There are other similar incidents that we see today. Claiming the Buddha’s *Dhamma* as one’s own is an infringement of his intellectual property of the *Dhamma Vinaya*. The Buddha called such a person “a big thief”, saying:

Bhikkhu, there are some bad monks who studied the *Dhamma Vinaya* that I taught and claimed to be theirs. Bhikkhu, such persons belong to the second category of big thieves in the world.

(*Vin.Mahāvagga* 1/195)

The Buddha uttered such words when there were cases of *Uttarimanussadhamma*, giving rise to the fourth *Sikkhāpada* concerning the *Pācittiya*. The point here is that in Buddhism a person who claims another person's knowledge or intellectual idea as his own is called a "big thief". He can be likened to a monk who stole the villagers' food to eat for himself, for his was a way of life based on deception, trickery and false livelihood, designed to deceive the faith and religious people. He, therefore, acted like a big thief who plundered the *Dhamma Vinaya*, religion and faith. Of course, the word "big thief" was used figuratively. It did not refer to a real thief who stole things from others. Rather, he was a "big thief of *Dhamma*". Although the *Vinayatipitaka* covers only Buddhist monks, in the researcher's view, it can be applied to people in general. Anyone who claims the *Dhamma Vinaya* as his own has a mind of a thief, whose act will be considered an "infringement of academic works as intellectual property".

Apparently, a misrepresentation of the Buddha's teachings is considered a show of disrespect for the Buddha, an infringement or a falsification of his intellectual work. Claiming the Buddha's teachings as one's own does not only constitute a violation but also an act of a "big thief". The Buddha's right to his teachings would be called today "a moral right" (Phillips and Alison, 1990: 205), something that needs to be protected in honor of the author. This is a matter of spiritual value and has nothing to do with commercial interests. A person who copies someone else's work deserves to be condemned by the rightful owner (Wat Thingsamit, 2008: 123). Of course, the situation is different from the Buddha's time when his teachings were not put in writing. At any rate, what he preached to the public was as important as the written word, for it was his intellectual manifestation and affirmed his ownership.

Memorization or oral tradition has long been a method that Buddhists use to review *Dhamma Vinaya* for verification purposes. *Tepiṭaka* Studies are divided into three groups: *Vinayatepiṭaka*, *Suttantapiṭaka*, *Abhidhammapiṭaka* (*Vin.Mahāvagga* 1/380-382). Although they were different from the Ancient Greek and Roman recording traditions, they shared some common traits, especially the honor and respect accorded to the authors and their intellectual creation. This is the right based on the relationship between society and the author and between the author and his creative work (Black, 1990: 497l). Returning to the *Dhamma Vinaya*, the Buddha's intellectual work, one can see how he is the holder of the moral right in two ways: 1) he attained Enlightenment by himself and presented it to the public; he was, therefore, the owner of the *Dhamma Vinaya* and 2) he had the right to forbid the distortion, abridgement and claim made by others and to admonish them accordingly. Any infringement of academic works as intellectual property in Buddhism is equivalent to an infringement of moral right. An interesting observation is that the Buddha considered an infringement of *Dhamma Vinaya* a violation of *Dhamma* only and not of *Vinaya* or *Sīla*, especially not *Adinnādāna*, whether committed by a religious or lay person.

### ***Adinnādāna* in *Pañcasīla* and the infringement of academic works**

In *Pañcasīla*, the second precept states “*Adinnādāna veramaṇī*”, the intention to abstain from taking things not given by their owners through the act of stealing. The saying can be further elaborated as follows:

“Property or things not given by their owners” means anything that another person cherishes or possesses (*Vin.Mahāvagga A.* (Pali) 1/437, *Vin.Mahāvagga A.* (Thai) 2/105), i.e. 1) property that the owner does not physically or verbally give away, 2) property that the owner does not give up or leave behind, 3) property that the owner does not throw away as he still likes to keep it, 4) property that the owner keeps, 5) property that is still in the owner's protection, 6) property which the owner holds the right to or clings to by desire as belonging to him, and 7) property

that the owner guards dearly (*Vin.Mahāvagga* 1/92, *Vin.Mahāvagga* A. (Thai) 2/105).

“Taking things not given by the owners” means taking them with an act of a thief by any one of the following 14 fashions: 1) stealing, i.e. taking something away from the owner without his knowledge, 2) snatching, i.e. taking something away from the owner when he does not pay attention, 3) extortion, i.e. taking something from the owner by force or threat, 4) robbery, i.e. going in a group to take something away from the owner by force, 5) claiming something from another that does not belong to one, 6) embezzlement, i.e. taking something in one’s hand that belongs to someone else, 7) deceiving or lying to get something from another, 8) trickery, i.e. take something that belongs to another by enticement, 9) faking, i.e. fabricating something to make it look valuable or genuine, 10) welching, i.e. borrowing something from another but refusing to return, 11) filching, i.e. taking small things from another, 12) changing, i.e. replacing something good with an inferior item, 13) smuggling, i.e. bringing in prohibited items, and 14) hiding, i.e. putting something that should be taken away in some safe place (Somdet Phra Maha Somana Chao Krommaphraya Vajirañānavororasa, 1992: 17-24).

To take things not given by the owners through the act of stealing means taking the property loved or possessed by the owners by such acts of stealing as carrying off, plundering, embezzling, and robbery. It does not matter if the act is done by the person himself or by a third party. The accomplished act is considered a violation of *Adinnādāna Sīla*.

The point is that *Adinnādāna* in *Pañcasīla* refers only to the movable and immovable property, as can be seen in the 14 acts of stealing above. It does not cover copyrighted intellectual property including literary and academic works. Hence, it is debatable whether an infringement of academic works is *Adinnādāna*.

There are two types of infringement of academic works – moral right and economic right – as follows:

### **1.) Infringement of moral right**

In general there are two types of moral right infringement:

Type 1: This refers to citing references to another person's work by distorting, abridging, adapting, causing damage to it by any other way, or mutilating it.

Type 2: In general this refers to the person concerned making no reference to the owner, with an implication that the idea is his own, and presenting another person's work, claiming that it is his own.

These two types share some general characteristics of repeating, copying, imitating or citing part of another person's work in one's academic work. In order to make such infringement even clearer, let's turn to legal consideration before touching on the Buddhist perspective.

Under Copyright Act B.E. 2537 (1994) three criteria are used to determine which act constitutes an infringement of copyrighted academic works:

First, consideration is given to whether academic works in the form of information, images or texts incorporated as part of the textbook are copyrighted (Manit Chumpa, 2006: 51). In general, books published by publishing houses are considered copyrighted, as they are concrete manifestations of abstract ideas. Even though there is nothing in the work to indicate who the copyright owner is, the law states that the author or the publishing house concerned holds that right. If the author wants to grant the copyright to the public, it must be done in writing, and that work will then lose its copyright. Any use of such work is not an infringement.

Second, consideration must be given to whether the work is still under protection of the law. If it is, any unauthorized use is an infringement. If the period of protection has expired, any use of such work is not an infringement (2006: 52).

Third, if the copyrighted work is still under the protection of the law, consideration must be given to whether any use of another person's work in one's text or academic work is covered in the exception clauses (2006: 52), e.g. a reasonable recitation, quotation, copying, or emulation

with an acknowledgment of the copyright owner<sup>8</sup> is not an infringement. Acknowledgment can be made in the form of reference in the bibliography, and no part is adapted or changed to the extent that damage is done. An act that does not unreasonably prejudice the legitimate owner of the copyright is not deemed an infringement.<sup>9</sup> However, if it is not covered in the exception clauses, it is an infringement.

When an infringement of the moral right of the academic works occurs, the author can demand the infringer to pay for the damages appropriate to the gravity of injury. Section 64 of the Copyright Act B.E. 2537 (1994) states: “In the case of infringement of copyright or performer’s rights, the court has the authority to order the infringer to compensate the owner of copyright or performer’s rights with damages the amount of which the Court considers appropriate by taking into account the gravity of injury, including the loss of benefits and the expenses necessary for the enforcement of the right of the owner of copyright or performer’s rights”. Section 438 of the Civil and Commercial Code calls such an infringement “a civil infringement” and calls the damages “compensation” (Wat Thingsamit, 2008: 133). The infringer is obliged to return the property to the person injured by his wrongful act. Compensation may include the institution of the property or its value as well as damages for the injury caused. The infringement of the copyright (moral right) can be redressed by other means including advertisement in the newspaper and destruction of the copied work (Manit Chumpa, 2006: 52).

In Buddhist terms, the first type of infringement is equivalent to “falsification of another person’s work”. The second type, claiming

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<sup>8</sup> Section 33: A reasonable recitation, quotation, copying, emulation or reference in part from a copyright work by virtue of this Act with an acknowledgment of the ownership of copyright in such work is not deemed an infringement of copyright; provided that Section 32 paragraph one is complied with (Copyright Act).

<sup>9</sup> Section 32: An act against a copyright work by virtue of this Act of another person which does not conflict with a normal exploitation of the copyrighted work by the owner of the copyright and does not unreasonably prejudice the legitimate right of the owner of copyright is not deemed an infringement of copyright (Copyright Act, Section 32, Paragraph 1).

another's work to be one's own, is an act of "a *Dhamma* big thief" or "a sin". Evidently, the infringement of both types is classified under the violation of *Dhamma*. Despite the gravity of the act against His *Dhamma Vinaya*, the Buddha considered it only a sin. Therefore any act against another person's academic work is merely a big thief of *Dhamma*. It is an evil act, *Akusala*, a sin, driven by greed or *Abhijjhā*, a covetous desire to obtain another person's work. Yet, it is not an *Adinnādāna* or cannot be classified as *Adinnādāna* probably for two reasons. First, a moral right is an abstract entity and cannot be commercially sold or transferred. Second, an infringement of right is an act that causes damage to one's reputation and dignity. It is not an infringement of property, for the damage is not clearly seen in the property itself or in property-related interests (Chaiyot Hemaratchata, 1997: 83). Legally speaking, it is only a civil infringement, which is in line with the Buddhist approach that considers it a *Dhamma* offense or a sin and not an infringement of property or *Adinnādāna*. Rather, it is more like an act of lying when claiming another person's work as one's own, the fourth *Sikkhāpada* of *Pañcasīla*.

## 2.) Infringement of economic right

An infringement of economic right is different from that of moral right. An economic right in an academic work results in financial interests for the author or in the right to exploit commercial gains for the author through the permission to use, transfer, or cancel the right or any other similar act. The right may be considered as a kind of goods. The economic right of the copyrighted academic work can be infringed through reproduction, adaptation, communication to the public<sup>10</sup>, selling, or offering it for sale.<sup>11</sup> Such economic right is protected by law only when the author or right holder exercises it. For instance, for the work that is produced and sold in the market, if the author or right holder does not exercise his right, no infringement is considered to take place, as in the case in which an act is

<sup>10</sup> An infringement under Section 27 is called "primary or direct infringement". For detail see Copyright Act B.E. 2537 (1994), section 27.

<sup>11</sup> An infringement under Section 31 is called "secondary or indirect infringement". For detail see Copyright Act B.E. 2537 (1994), section 31.

done to the book that is no longer produced or out of print. In general, an infringement of economic right can take two forms:

Type 1: citing part of another person's academic work for more than 25%, whether or not acknowledgment is made to the author, or claiming it to be one's own is an infringement. If an acknowledgment is made to the author, there is only an infringement of economic right. However, if it is not made or a claim is made to own the work, there are infringements of both moral right and economic right.

Type 2: citing the entire work or idea of another person, whether or not acknowledgment is made to the author, or claiming it to be one's own, is an infringement. If acknowledgment is made to the author, there is only an infringement of economic right. However, if no such acknowledgment is made or a claim is made to own the work, there are infringements of both moral right and economic right.

“Reproduction” and “adaptation” (Copyright Act, Section 27) have different meanings. Reproduction refers to any technique of copying, imitating, duplicating, molding, sound recording, video recording or sound and video recording of the essential part of an original copy or publication whether in whole or in part and, regarding computer programs, duplicating or copying the program from any medium of the essential part with any method in a manner in which no new work is created whether in whole or in part. Adaptation, on the other hand, refers to a reproduction by transformation, improvement, modification or emulation of the essential part of an original work without creating a new one, whether in whole or in part. In particular, literary works include translated works, translation, a transformation or a compilation by means of selection and arrangement (Copyright Act, Section 4). Thus, citing another person's academic work in either manner is a direct infringement of copyright known as “reproduction” or “adaptation” under the Copyright Act. To illustrate what is meant by the economic right and infringement of property more clearly, one may consider a case of photocopying a commercially available book for study or research purposes. Legally speaking, such an act constitutes a “reproduction” of the entire academic work and, therefore, an infringement of academic works of Type 2 mentioned above, as follows:

Mr. A wrote a textbook entitled *Infringement of Property Rights in Buddhism* and sold the copyright for publication and distribution to Company D as an executing agency. Mr. A received remuneration for the publication and distribution, and the Company sold the book for 300 baht a copy.

In this case Mr. A has the right to information on both counts:

a.) Economic right arising from the copyright in the publication and distribution takes the form of remuneration per book sold (the amount depending on the agreement made between the author and Company D. Evidently, in this case the right will not occur if there is no publication and distribution. Only the company holds the sole right to the publication and distribution; no one else has the right to infringe it. If another company wants the right to publish and distribute the book, it needs to have a prior permission from Mr. A and Company D. Alternatively, it has to buy the right from Company D or wait until Company D's right expires before it can buy the right from Mr. A. Anyone who wants the book can pay for the copyright by buying it from Company D or from the shop that Company D granted the right to. In other words, the price of the book is an economic right as well as a moral right.

b.) Moral right is reflected in the way the publishing house has the book published without any abridgement or modification and, more importantly, puts in print the name of the author in due respect.

To illustrate a case of infringement, let's consider an example in which an individual photocopied the entire book without authorization. Legally speaking, it was an infringement of the economic right of Mr. A, the author, as well as an infringement of the economic right to publication and distribution owned by Company D. The damage that occurred was equal to the value of the property or the price of the book on sale in the market at the time. In other words, if the book was photocopied for study or research purposes, the act would still affect both rights at a value of 300 baht. The law calls this infringement: "a reproduction that conflicts with a normal exploitation of the copyrighted work by the owner of the copyright and unreasonably prejudices the legitimate right of the owner

of copyright. This is deemed an infringement of copyright" (Copyright Act, Section 32). The penalty for reproduction of the copyrighted work for personal use but not for profit-oriented exploitation for the offending person is a fine from 20,000 baht up to 200,000 baht (Copyright Act, Section 69). The object of infringement, here the photocopied book of the offender, will belong to the copyright owner, and all things used for committing the offense shall be forfeited (Copyright Act, Section 75). One half of the fine thus paid shall be disbursed to the owner of the copyright. However, if the fine imposed does not cover the damage, the copyright owner can take a civil action for damages for the amount which exceeds the fine (Copyright Act, Section 76). In the event that the book that was photocopied was out of print, unavailable in the market, or sold out, the law does not deem the act an "infringement of intellectual property" (Manit Chumpa, 2006: 66-70), because it does not conflict with the exploitation of the author and the publishing and distributing company, i.e. not in conflict with the economic right.

The example of photocopying an entire book can be compared to an infringement of an academic work. If one takes all the information from another person's entire book which is on sale in the market and claims it as one's own, this act constitutes a copy or reproduction of another person's work. In the eye of the law, it is no different from photocopying the entire book. In terms of infringement of property, it destroys the interests or opportunity for economic exploitation of the owner who stands to lose earnings from the intellectual work he is entitled to.

The above examples are examples of reproduction of the entire academic work. What about partial reproductions?

Citation of some information in one's academic work will be considered an infringement of an economic right when it exceeds 25% of the original work (Type I of infringement of academic work mentioned above). As stated in a Court's judgment (No. 5843. 2543), partial reproduction must not exceed 25% of the copyrighted book (Manit Chumpa, 2006: 63). Therefore, if an academic work is 200 pages long, 25% equals to 50 pages. Any citation of more than 50 pages is an infringement of another

person's copyright. No offense is committed if the citation does not exceed 50 pages. A decision was made by the Central Intellectual Property and International Trade Court on the issue as follows:

There were 43 reproductions: 20 taken from 5 chapters of "Organization Behavior" representing 25% of the book and 19 from 5 chapters of "Environmental Science" representing 20.83% of the book. The Court views this as a reasonable act done for educational purposes and not as an infringement of the copyright as it comes under the exception clauses as stated in Section 32, Paragraph 1, and Section 32, Paragraph 2(1).

... A study needs to use information which exists in a lot of texts and articles. To require students to copy only one article from a journal or a chapter from a book may not sufficiently help them understand the ideas or thoughts behind the writing of the book. A requirement that they buy every book or subscribe to every journal without legally reasonable exceptions would be an obstacle to the progress of education and academic discipline in society.

(Manit Chumpa, 2006: 69-70)

The Court's judgment shows that it recognizes the need to copy or cite parts of the book for study or research purposes without unduly prejudicing the right of the copyright owner, i.e. not more than 25% of the entire book. Such an act is an exception to the infringement, universally known as "fair use". However, there are cases in which copying or citing less than 25% could be legally considered unreasonable when it covers the essence of the book. Then, the act will constitute an infringement, as could be seen in another Court's judgment, No. 1908/2546:

The accused copied or imitated about 30 pages out of 150 pages of the literary work of the plaintiff (representing 20%). Although only some parts were taken, they were all essential contents. Therefore, the plaintiff was considered to

unreasonably copy or imitate a copyrighted work of another person.

(Oraphan Phanatphatthana, 2006: 128-9)

With regard to copying or citing academic works that are unpublished, commercially unavailable, or sold out, the law does not consider the act as an infringement of another person's intellectual property, as it is not in conflict with the exploitation of the author and the publishing and distributing company (as far as the economic right is concerned).

In Buddhism, however, an infringement of the economic right to the academic work is an offense against property, especially when there is clear damage done to the property. It can be classified under *Adinnādāna* of *Pañcasīla*, for this precept was created out of human natural law. Every person loves and feels attached to the property that he owns or holds; naturally, he does not want another to steal, take away or destroy it. Such a feeling is natural to the owner. If we hold such a feeling as an owner, others should feel likewise. So, we should abstain from *Adinnādāna* and respect and recognize another person's property (S.V. (Pali) 19/1003). When we do not infringe another person's property and ownership, he would reciprocate in kind. If one infringes another's property, one implicitly does not recognize the other party as being human or having the same natural quality as oneself, i.e. cherishing what one owns. When everyone respects the right of one another, their property will be protected in the process. Thus, the intent of the second precept, *Adinnādāna veramaṇī*, is to prevent an infringement or destruction of the right to property of each other (Pin Muthukan, 1993: 273). The idea behind the protection of academic works as intellectual property is the same, the only difference being in *Adinnādāna* the object is confined to only two types of property: movable and immovable property, as can be seen from the 14 acts of a thief above. Nevertheless, Buddhism has a set of principles that can be applied to what was not originally contained in the disciplinary provisions. It is known as *Mahāpadesa* consisting of four principles:

1) Whatever has not been objected as “not allowable”, if it fits in with what is not allowable and goes against what is allowable, is not allowable.

2) Whatever has not been objected as “not allowable”, if it fits in with what is allowable and goes against what is not allowable, is allowable.

3) Whatever has not been permitted as “allowable”, if it fits in with what is not allowable and goes against what is allowable, is not allowable.

4) Whatever has not been permitted as “allowable”, if it fits in with what is allowable and goes against what is not allowable, is allowable.

(*Vin. Mahāvibhaṅga* (Pali) 5/305/)

The infringement of the economic right corresponds to the first principle of *Mahāpadesa*: “Whatever has not been objected as “not allowable”, if it fits in with what is not allowable and goes against what is allowable, is not allowable”. In other words, an academic work may not directly be the property that Buddhism forbids to do *Adinnādāna* against, but something of a similar nature. The copyright law considers an academic work an intellectual property and a legitimate intellectual product. Whatever commercial benefits that occur belong only to its creator. Anyone who wants to make use of it needs to pay certain royalty for the (economic) right and receive prior authorization from the right holder. An attempt to cite more than 25% of the creation or all of it brings about loss to financial benefits, something similar to *Adinnādāna*. The principle is intended to encourage honest livelihood and stop the infringement of another person’s property. Such an act, therefore, goes against the Buddhist teaching of abstaining from taking another person’s property. In light of *Adinnādāna*, an infringement of academic works should never be committed.

Here there are two important criteria that support the inclusion of academic works in the *Adinnādāna* principle: 1) an infringement of the economic right of an academic work in financial terms, and 2) *Mahāpadesa* principles that allow property not included in *Adinnādāna* to be included.

Now we will consider how an infringement of an academic work fulfills the five requirements of *Adinnādāna*. If all five requirements are not fulfilled, such an act is not *Adinnādāna*: 1) *Parapariggahitam*,

something that the owner cherishes, 2) *Parapariggahitasaññitā*, knowing full well that it is cherished by the owner, 3) *Theyyacittam*, intention to steal, 4) *Upakkamo*, making an effort to steal, and 5) *Ten haranam*, taking it by exertion of an effort (*It.A. 20/359*). Applying these five criteria to the infringement of an academic work, one can come up with the following argument:

1.) An academic work is something that its “owner” cherishes, i.e. an economic right of the creator (or author) and another company or person responsible for producing and distributing it. In general, it is legally recognized that a book published by a publishing house is copyrighted regardless of whether or not it bears any sign of ownership. However, this requirement is not fulfilled if the author decides to grant the copyright to the public, which must be done in writing, or if the protection expires 50 years after the author’s death, or the author no longer commercially exploits the intellectual property in such instances as when the book is out of print, no longer sold in the market, or sold out and not re-published. If the academic work is granted to the public, what is granted is only the economic right. The moral right, on the other hand, cannot be sold, transferred or granted to anyone. For example, every work of Phra Brahmagunaphorn (P.A. Payutto) does not reserve the copyright for re-printing and re-distribution, but those who want to publish and distribute it need to inform him first. In this case, the economic right belongs to the public. Any person or organization can have his work re-printed, and the previous person or organization has no right to stop or prevent it, although the author needs to be informed about it first. The right to be informed each time a person wants to have the work reprinted and distributed is called “a moral right”. Academic works of this nature does not fall under this requirement.

2.) Knowing full well that the work is cherished by the owner or is owned by someone. It is not difficult to know which academic work is copyrighted, since every book bears the names of the author and the publishing house indicative of its creator, copyright owner, or right holder. An author who does not want to keep the work as copyrighted will declare his intention in it. Today, publication and distribution are done through a publishing house, printing house or any other organization. In the event

that the author does not intend to exercise his right to do the publishing and distributing himself, he can do so through a publishing house, printing house or any other organization by an agreement allowing another party to exploit his intellectual property, while the author will receive certain fees from it. In this case, the other party has become the right holder. Every right holder cherishes his right. So, a person committing an infringement of the academic work concerned cannot claim that he has no knowledge about it. The actual words used in the Act are “Any person who knows or should have known” (Copyright Act, Section 31).

In every book, if there is no declaration of intent to grant the right to the public, it implies that by law, the author or publishing house that holds the right cherishes the work. Any act that goes against the law is done by someone “who should have known” about the infringement. He cannot claim that he does not know about it. In Buddhist *Vinaya* this is not necessarily the case. A person who has committed an infringement may claim that he did not know about the rule. Admittedly, he may have come across a statement of copyright somewhere but was not aware of doing something against the law. In this case, the act of infringement does not take place under the second requirement. However, if subsequently he knows about the infringement, he must stop immediately. Otherwise, his act will come under this requirement.

3.) Intending to steal another person’s academic work while knowing full well that it is cherished by its owner or protected by law. The law requires that a person who wants to make use of another person’s intellectual property will have to buy it from the right holder. For instance, if the work is published or distributed by the author, one should buy it from him or from a person to whom the author grants the right. Any other act would be considered “*Theyyacittam*” intending to commit an infringement. For example, instead of buying or borrowing it from the library, one chooses to photocopy the book to save money, or photocopy more than is actually needed. In addition, one can cite or quote passages for reference without causing an infringement if the citation does not exceed 25% of the work, with an acknowledgment of its author. This can easily be complied with.

If one does not do so, the offense is considered to have been committed with a mind full of greed.

4.) Taking action to infringe the academic work through reproduction or adaptation and communication to the public or copying the contents in one's own work in print or in writing.

5.) An act of infringement is complete through a series of efforts, e.g. copying as much of the contents as one wants to, or making as many photocopies of the copyrighted work as one wishes.

The cases below are examples of how the requirements of *Adinnādāna* are fulfilled in the infringement of copyright (economic right) as far as two types of academic works are concerned:

Case 1:

Mr. A wrote an academic work entitled *Buddhist Ethics* but copied 60 pages of Mr. B's 200-page book currently on sale in the market (representing 30% of the book) without any acknowledgment.

This is an example of the infringement of the moral and economic rights. It was an infringement of moral right because no acknowledgment was made of the author of the intellectual work while he had full knowledge that the work belonged to another person. It was an infringement of the economic right of Mr. B and the company granted the right to publish and distribute the work because more than 25% was reproduced or copied. The act also fulfilled the five requirements of *Adinnādāna*.

1.) An academic work was something that its "owners", Mr. B and the publishing and distributing company, cherished, as it was their sole rights. If Mr. B did not want to keep the right, he must have declared his intention to grant it to the public.

2.) Knowing full well that the work was cherished by the owner, knowing that it was owned by Mr. B and the publishing and distributing company, knowing that the reproduction or copy exceeded 25% of the entire book. This constitutes an infringement of the copyright law. (If Mr. A did not know this information, the act would not fulfill this requirement and the intention requirement.)

3.) Intending to infringe another person's academic work, committing the offense while knowing that it was against the law. The act could be done out of the wrongdoer's desire for a quick and easy fix or out of covetousness for another person's work. This was a case of *Theyyacitta*, a desire to unduly violate the property of others, for without the influence of *Theyyacitta*, a person could legally make use of the author's work by copying for reference purposes not more than 25% of the work.

4.) Taking action to infringe the academic work through intentional reproduction or adaptation.

5.) An act of infringement was complete through a series of efforts, e.g. copying or reproducing another person's academic work into one's own work.

Thus, Mr. A's act met all the requirements of *Adinnādāna*, a violation of *Sīla* and *Dhamma*, and therefore a sin. A person who infringes another person's academic work commits *Adinnādāna*, violating both *Sīla* and *Dhamma*. All five requirements must be fulfilled, otherwise no *Adinnādāna* can be said to occur. In the case of Mr. A, another *Sīla* was broken when a moral right was infringed through lying "*Musāvādā*", the fourth precept of *Pañcasīla*. He copied excessively from another person's work without acknowledgment and claimed it to be his own. His act violated two precepts of *Pañcasīla*: infringing a moral right being equivalent to committing *Musāvādā*, and infringing an economic right committing *Adinnādāna*.

Whether partial photocopying of an academic work constitutes *Adinnādāna* also needs some analysis. When a partial copy, done by whatever means, exceeds 25% of the work, it is legally considered an infringement of copyright in the category of "reproduction" under Section 27 of the Copyright Act. Mr. A might socially acknowledge in some way or another the author of the work, but the law would still regard the act as an infringement of the economic right and the copyright, although he might violate only one precept of *Sīla* of *Adinnādāna* but not *Musāvādā*.

Besides, a person can infringe only the moral right. For instance, Mr. P completed a thesis on *Intellectual Property in Buddhism*, and its copyright went to the Graduate School of the University. Here, the moral right belonged to him, while the Graduate School was the sole right holder with regard to the economic exploitation of the work. However, the School might not exercise that right, i.e. the work was not published and distributed or disseminated to the public in any way. Instead, it stored the information and work in the library. If another person copied all or more than 25% of the work with or without acknowledgment or with a claim that it was his own, in the eye of the law he did not commit any infringement of the moral or economic right. In Buddhism the act is not *Adinnādāna* either, but may be considered *Musāvādā* for claiming another person's work as his own.

Case 2:

Mr. C wrote an academic work entitled Buddhist Ethics and sold the copyright to a publishing and distributing company, Company D. The book is 400 pages long, and he received 30% of the price for each copy sold, while the book was sold in bookstores. Mr. E was doing a Master's Degree thesis and wanted to use 1-2 pages of the book. However, he did not want to buy the book, as the price of 500 baht a copy was too high for him. So, he chose to photocopy the entire book instead.

This is a case of an infringement of the economic right of Mr. C and Company D. Mr. E did it, being fully aware that the book was commercially available and protected by the copyright law. He did it for economic reasons. The law, however, considers the act adversely affecting the legitimate right of Mr. C and Company D, an infringement of the copyright. Now, let's review the incident in light of the requirements of *Adinnādāna*:

1.) This was a copyrighted book cherished by the owner, Mr. C, and the publishing and distributing company, Company D. The book was protected by the Copyright law, as the right belonged solely to Mr. C and Company D. If Mr. C did not want to possess it, he needed to inform his intention to grant the right to the public. Although Mr. E's act was intended

for study or research purposes, it was considered a reproduction of the copyrighted work, and, therefore, an infringement of another person's property.

2.) Knowing full well that the work was cherished by the owner or protected by law: Mr. E knew that the book's copyright belonged to Mr. C and Company D and that reproducing more than 25% or the entire book by photocopy was an infringement of copyright as well as an illegal act. If he was not aware of all this, this requirement of *Adinnādāna* was not fulfilled.

3.) Intending to infringe another person's book by photocopy: Despite knowing that the act was wrong, he did it because he wanted to possess another person's work without paying for the right as required by the law. This was a case of intention to infringe or *Theyyacitta*, for without the influence of *Theyyacitta*, a person could legally make use of the author's work by copying for reference purposes not more than 25% of the work.

4.) Taking action to photocopy the copyrighted book himself or asking another party to do on his behalf, e.g. instructing one of his subordinates, relatives or photocopy shops to do it for him. All this constituted an attempt to commit infringement.

5.) An act of photocopying the entire book was complete through a series of efforts, e.g. photocopying it himself or instructing another to do it for him. The act must be completed; otherwise, this requirement of *Adinnādāna* was not fulfilled. For example, the instruction was to photocopy the entire book, but only half of the book was photocopied. Or the instruction was to photocopy the book and have the copied version bound, but the person who was instructed only made a photocopy of the book but no binding was done.

In this case, Mr. E's act completely met all the requirements of *Adinnādāna*, a violation of *Sīla* and *Dhamma*, a sin. An act of photocopying another person's academic work constituted *Adinnādāna*, violating both *Sīla* and *Dhamma*. If the person was under the influence of *Theyyacitta* but did not carry out the act, there was no *Adinnādāna* committed. No *Sīla* was broken. In addition, copying or claiming another person's work

as one's own with or without acknowledgment was an infringement of copyright in the category of "reproduction" under Section 27 of the Copyright Act. The case of photocopying the entire book was done under the pretext of making use of another person's work while acknowledging the presence of the author. If the act was not permitted by the author, it was still an infringement of the economic right. Buddhism would consider the person to violate not *Adinnādāna* but also *Musāvādā* when he claimed the work as his own.

## Conclusion and recommendations

An infringement of academic works is an act that, under the law, causes damage to the reputation or dignity of the author or creator of the intellectual work through adaptation, undue abridgment, or claim that it is one's own (moral right) or leads to loss of interests or revenue that the author is entitled to through reproduction, adaptation or communication to the public (economic right) without proper authorization or legal exceptions. In Buddhism infringement of academic works, i.e. the Buddha's *Dhamma Vinaya* can take two forms: misrepresenting it, or "misquoting the Buddha" or "falsifying *Dhamma Vinaya*" and claiming the Buddha's teaching as one's own. The Buddha calls such a person "a big thief". Infringement of both types is classified by the intellectual property law as an infringement of "moral rights". However, in the Buddha's time, there were no such things as economic rights, and no such infringement was available. Furthermore, the infringement of moral rights, such as not acknowledging the author or claiming another person's work as one's own is a civil offense. The wrongdoer is obliged to pay damages. In Buddhism, the act is not *Adinnādāna* but rather *Musāvādā* on the grounds of claiming another person's work as one's own. It is sinful and immoral. An infringement of the economic right through reproduction, adaptation, production or selling, is legally considered an infringement of property, causing financial damage to the author or producer. It is an infringement of a copyrighted academic work the offender of which is liable to civil and criminal punishment. In Buddhism such an act is also an infringement of *Adinnādāna* of *Pañcasīla* if it meets the five criteria: 1) *Parapariggahitam*,

something that the owner cherishes, 2) *Parapariggahitasaññitā*, knowing full well that it is cherished by the owner, 3) *Theyyacittam*, intention to steal, 4) *Upakkamo*, making an effort to steal, and 5) *Ten haraṇam*, taking it by exertion of an effort. A person who commits *Adinnādāna* is said to violate both *Sīla* and *Dhamma*. If the person is under the influence of *Theyyacitta* but does not carry out the act, or if the act does not meet any one of the criteria, there is no *Adinnādāna* committed. In *Dhamma* terms, the person is still guilty. If no *Theyyacitta* is involved, whatever is done does not constitute *Adinnādāna*. No *Sīla* is broken.

In practice, however, when a person wrote an academic work and was known to infringe the work of another person or accused of doing so whether intentionally or unintentionally, an opportunity would be provided for him to come to some agreement with the copyright owner. A copyright case can be settled out of court. If both parties are willing to do so, they will save a lot of time and money and do not have to go through the judicial proceeding (Manit Chumpa, 2006: 54). In Buddhism, if the author of the academic work has no intention to commit the infringement, no wrong is done in both *Sīla* and *Dhamma*. If there is an intention to infringe or *Theyyacitta*, and if the act meets one or more requirements of *Adinnādāna*, he is said to violate both *Sīla* and *Dhamma*. If no requirement is fulfilled, except the case of *Theyyacitta*, the act may not be against *Sīla* but rather against *Dhamma*. In other words, it is still a sin. Therefore, when one wants to write an academic work and needs to use information or contents of another person's work, even in parts, due acknowledgment should be made to show respect and honor to its owner. Then the act would be legally and morally acceptable.

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