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Pornographic films are not works under Taiwanese copyright law

[Formosa Transnational - Taiwan](#)

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The Taipei District Prosecutor's Office recently held that pornographic films produced by Japanese companies were not "copyrighted works" as defined in Article 3 of the Taiwanese Copyright Act.

Early in 2010 several Japanese adult film makers held a press conference to announce their determination to protect their copyrights. These film producers found that many unauthorised copies of their adult films were easily downloadable or viewable through many popular internet service providers (ISPs) in Taiwan, including Elta Technology Co Ltd, an affiliate of the largest telecommunications service provider, Chunghwa Telecom. The producers claimed that since Taiwan and Japan are both members of the World Trade Organisation, Japanese works should be protected by the Taiwanese Copyright Act. They also claimed that the adult films were original and therefore copyrightable. The producers stated that the unauthorised copies of the films had caused them major economic losses; therefore, they warned ISPs that they would face legal action if they did not obtain licences from the film producers.

Despite a Supreme Court judgment to the contrary, the Taiwan Intellectual Property Office (TIPO) has tended to recognise adult films' copyrights. In 1999 the Supreme Court held that adult films are not copyrightable because these films are against social order or public interest, and in no way promoted social development. Nevertheless, this position was not supported by TIPO. In a letter of explanation issued in 2008, TIPO stated that if adult films are original, they are copyrightable regardless of whether they are also categorised as obscene material.

The Japanese adult film producers filed a criminal complaint against several ISPs. Recently, the Taipei District Prosecutor's Office chose to follow the Supreme Court judgment and not to prosecute these ISPs. In its press release the office said that in the prosecutor's view, these films were pornographic. Article 3 of the Copyright Act defines a 'work' as "a creation that is within a literary, scientific, artistic, or other intellectual domain". Although the Copyright Act is intended to protect the intellectual creations of individuals or corporate entities, it is still subject to limitations of public order and good moral rules. As a result, the prosecutor found that the adult films were not copyrightable and decided not to press charges against the ISPs.

This case shows that pornographic films are still not copyrightable in Taiwan despite TIPO's positive position. Nevertheless, the courts have issued few decisions regarding copyright infringement and pornography. It remains to be seen whether this position will change in the future.

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