

People's Republic of China
Shanghai No. 1 Intermediate People's Court
Intellectual Property Infringement Judgment

(2005) Hu No. 1 Intermediate Civil 5(IP) No.317

Plaintiff I: Huang Nenghua
Address: 11 LUKOW TERRACE. TORONTO. ON. CANADA M6R 3B7.
Litigation Agent: Xu Wenxia (daughter of Huang Nenghua)

Plaintiff II: Xu Wenxia
Address: 11 LUKOW TERRACE. TORONTO. ON. CANADA M6R 3B7.
Litigation Agent: Xu Qiang, Attorney , Shanghai Huidafeng Law Firm
Wu Bin, Attorney , Shanghai Huidafeng Law Firm

Plaintiff III: Xu Wenlu
Address: No. 95 Lane 690, Changzhi East Road, Shanghai
Litigation Agent: Xu Qiang, Attorney , Shanghai Huidafeng Law Firm
Wu Bin, Attorney , Shanghai Huidafeng Law Firm

Plaintiff IV: Xu Wenlei
Address: Room 402, No.41 Tanjia bridge, Xiangde Road, Shanghai
Litigation Agent: Xu Qiang, Attorney , Shanghai Huidafeng Law Firm
Wu Bin, Attorney , Shanghai Huidafeng Law Firm

Plaintiff V: Xu Wenting
Address: 11 LUKOW TERRACE. TORONTO. ON. CANADA M6R 3B7.
Litigation Agent: Xu Wenxia (elder sister of Xu Wen-ting)

Defendant I: CHINA RECORD SHANGHAI CO.,LTD
Address: Building 74, No.1066 Qinzhou North Road, Shanghai
Legal representative: Yang Linhai, General Manager
Litigation Agent: Chen Jianping, the company employees

Defendant II: Ru Jinshan
Address: Room 201, No. 91, Meilong Village, Shanghai

The plaintiffs Huang Nenghua, Xu Wenxia, Xu Wenlu, Xu Wenlei and Xu Wenting (“**The Plaintiffs**”) sued the defendants CHINA RECORD SHANGHAI CO.,LTD (“**CRS**”) and the defendant Ru Jinshan (“**The Defendants**”) over copyright

infringement. After accepting the case on September 27, 2005, the Court formed a collegial panel in accordance with the law and held a public hearing on November 23, 2005. Xu Wenxia, the entrusted agents of the plaintiffs Huang Nenghua and Xu Wenting, Xu Qiang, the entrusted agents of the plaintiffs Xu Wenxia, Xu Wenlu and Xu Wenlei, and Chen Jianping, the entrusted agent of CRS, were among the defendants, and the defendant Ru Jinshan appeared in court. This case has henceforth been concluded.

Plaintiff Huang Nenghua, Xu Wenxia, Xu Wenlu, Xu Wenlei and Xu Wenting claimed that Xu Ruhui (1910.7.10-1987.1.4), formerly known as Shui Hui, is the composer of the famous Songhu Operas "*Tears of Prostitute*", "*The Mother as Slave*", "*Dragon and Phoenix Flower Candle*", the writer and composer of "*White Heron*" enjoys the copyright according to the law. The five plaintiffs are the legal heirs of Xu Ruhui, who inherited the property rights in his copyright and are entitled to protect the personal rights in his copyright according to law.

In April 2004, the Plaintiff found a tape of "*Famous Songhu Opera Music Accompaniment Series (III)*" which were published and distributed by the defendant CRS and conducted by the defendant Ru Jinshan. The tape contained works of "*Tears of Prostitute*", "*The Mother as Slave*", "*Dragon and Phoenix Flower Candle*" composed by Xu Ruhui and "*White Heron*" scripted and composed by Xu Ruhui. However, the composition of these works are not signed for Xu Ruhui but for the defendant Ru Jinshan and both defendants did not pay remuneration to any plaintiff. After the Plaintiff reflected that to Shanghai Literature and Art Copyright Association (hereinafter referred to as "**the Association**"), the defendant CRS acknowledged the infringement but refused to recall and destroy all the infringing products. The Plaintiff failed to negotiate many times and still found the infringing products on the market until August 2005.

The Plaintiffs argued that:

The Defendants should obtain the consent of the copyright owner and his heirs and paid them before using Xu Ruhui's works. However, The Defendants seriously infringed Xu Ruhui's rights of attribution, reproduction, distribution, modification and remuneration of his work, which violated *the Copyright Law*. Therefore, the five plaintiffs requested: 1) the Defendants shall stop infringing Xu Ruhui's copyright; 2) the defendant CRS

shall recall back and destroy the infringing products; 3) the Defendants shall publicly apologize to them in *Xinmin Evening News*; 4) the Defendants shall compensate the Plaintiffs of RMB 100,000; 5) the Defendants shall bear the Plaintiffs' expenses to stop the infringement, totaling RMB 19,574.50. In the proceeding of this lawsuit, the Plaintiffs waived their rights against the scripting of "*White Heron*".

The defendant CRS argued that:

1. Xu Ruhui is not the composer of the five sing segments in the tape. Traditional tunes are the result of the joint labor of generations of artists. In the past time, the main duties of composers were writing down the score and chorusing. The key characters' key songs were formed in the way that the actors designed the singing voice and the piano player assisted. Xu Ruhui served as the chorus, coordinator and scene music composer in "*The Mother as Slave*", so the performance announcement and leaflet at that time were signed by the composer Shui Hui and the defendant did not dispute this. But this does not mean that all the music in the play is composed by Xu Ruhui, the score provided by the Plaintiffs does not contain a score for the main singing segment, which also shows that the singing segments are not Xu Ruhui's work.

2. The basic melody of the Songhu Opera songs included in the tape is the traditional tune of Songhu Opera such as [*Anti-Yin-Yang*]. The reply letter from the defendant CRS to the Association does not mean that the Association has confirmed that the copyright of the work belongs to Xu Ruhui. Even if Xu Ruhui had the right, the defendant CRS did not intend to infringe the copyright in the production of the tapes. In particular, after the Plaintiffs claimed the rights from the Defendants, CRS took a positive attitude to negotiate, but the Plaintiffs abruptly terminated the communication between the two parties.

3. The Plaintiffs' claim for compensation of CNY100,000 yuan lacks basis and the attorney's fee and airfare are unreasonable and shall not be borne by the Defendants. Therefore, the defendant CRS requested to reject all the Plaintiffs' claims.

The defendant Ru Jinshan argued that:

1. The Plaintiffs did not show evidence like the original manuscript of the specific

melody of the five singing segments or the formal publication signed by Shui Hui. The music score of Chinese opera “*The Mother as Slave*” provided by the plaintiff only shows a text prompt “to sing [*Four Seasons of Love Tune*]” with no score in the “*Homesickness*” paragraph. The “*Yang’s Eight Songs*” in “*Tears of Prostitute*” was formed before Xu Ruhui joined the Qinyi Songhu Opera Troupe, Xu Ruhui only added scene music to the play. The singing segments in “*Dragon and Phoenix Flower Candle*” and “*White Heron*” were sung by Yang Feifei and scored by Chen Jinkun, which had nothing to do with Xu Ruhui. At the same time, Xu Ruhui was not familiar with the rhyme of the four voices of the Shanghai dialect as well as the characteristics of the actor’s rhythm, he was unable to compose the Yang’s singing, so Xu Ruhui is not the composer and designer of the singing segments.

2.Xu Ruhui was a full-time composer in the former Qinyi Songhu Opera Troupe, the music and chorus of the play he composed should belong to his official work, the copyright of which belongs to the troupe.

3.The letter from CRS to the Literary Association admitted that there was a mistake in the signature because at that time CRS did not know the copyright did not belong to Xu Ruhui. In addition, the defendant Ru Jinshan was invited and entrusted by the company to re-orchestrate part of Yang Feifei’s earlier singing segments, so the company signed Ru Jinshan as orchestrator and conductor on the cover, not the composer.

The Plaintiffs provided the following evidence in support of their claims:

Group A, proving that Xu Ruhui is the copyright owner of the compositions of the Songhu Opera “*Tears of Prostitute*” and other plays.

1.The performance announcements, programs and leaflets of the Songhu Opera “*Tears of Prostitute*”, “*The Mother as Slave*”, “*Dragon and Phoenix Flower Candle*”and“*White Heron*” from 1954 to 1963, proving that Xu Ruhui was the composer of the Songhu Opera “*Tears of Prostitute*” and other plays.

2.The leaflet of “*Composer Xu Ruhui’s 95th Anniversary Symposium*”, proving Xu Ruhui’s contribution to opera music.

3. The introduction of the Shanghai Songhu Opera Awards Committee and the Qinyi Songhu Opera Troupe in the *Shanghai Songhu Opera Journal*, proving that Xu Ruhui composed the Songhu Opera “*The Mother as Slave*” and “*Tears of Prostitute*” and he was a composer and expert of Songhu Opera.

4. VCD “*Art Collection of Yang Feifei and Zhao Chunfang*” and tape photos of “*The Mother as Slave*”, proving that Xu Ruhui is the composer of the Songhu Opera “*Tears of Prostitute*”, “*Selling Red Water Chestnut*” and “*The Mother as Slave*”.

5. The testimony of Lu Caigen, the audio recordings of Yang Feifei’s interview and the written notes jointly issued by Yang Feifei, Zhao Chunfang and Lu Cai-gen, proving that Xu Ruhui is the composer of the Songhu Opera “*Tears of Prostitute*” and “*The Mother as a Slave*”.

Group B, proving the infringement of the two defendants.

1. Two letters from the defendant CRS to the Literary Association, proving that CRS admitted the infringement.

2. The Notary Certificate and one box of sealed cassette tapes.

3. Cassette tape of “*Selections of Ma Lili’s singing tune*”, VCD photos of “*Ma Lili—Stage Art Selections*”, proving that the Defendants’ claim of the composer’s signature is not true, the singing segments of the above-mentioned VCD all indicated the composer.

Group C, proving the Plaintiffs suffered economic losses, including the contract between the plaintiff and their lawyer, invoices for attorney fees, notary fees, file search fees, photocopying fees, translation fees, travel expenses and other expenses.

After examination, the Defendants have no objection to the authenticity of the above three groups of evidence. However, the Defendants argued that the evidence in Group A was insufficient to prove that Xu Ruhui composed the singing segments of Songhu Opera. CRS also believed that:

1. The signature of “Shui Hui” on the VCD of Evidence 4 in Group A was added before the lawsuit according to the Plaintiffs’ request in the reissue.

2. The Notary Certificate in Group B did not indicate the publishing unit of the record, so it cannot prove that the record purchased by the Plaintiffs was published and distributed by CRS.

3. Evidence 3 in Group B lacked relevance to the case and cannot prove the Plaintiffs’ point of view.

4. The attorney fee claimed by the Plaintiffs violated the relevant provisions, the purpose of translation fee was unknown, etc., so the actual expenditure costs claimed by the Plaintiffs cannot be accepted.

The defendant Ru Jinshan had no objection to the Notary Certificate of facts and agreed with the rest of CRS’s cross-examination.

The defendant CRS provided the following evidence to prove its defense:

1. Excerpts from “*Shanghai Drama Chronicles*” and “*Songhu Opera Examination*”, proving that the composition record of “*Tears of a Prostitute*” did not include Xu Ruhui’s signature.

2. The two letters from the Literary Association to CRS, proving that the Literary Association was entrusted by Xu Wenxia to send a letter to CRS and CRS has replied to Xu Wenxia.

After the trial, the Plaintiffs did not dispute the authenticity of the above evidence but argued that the lack of compositions recorded in Exhibit 1 can only show that the protection of intellectual property rights is not perfect, and cannot prove the Defendants’ point of view. The defendant Ru Jinshan did not dispute any of the above evidence provided by CRS.

The defendant Ru Jinshan provided the following evidence to prove his defense:

1. The testimonies of the witnesses Yang Feifei (testifying in court), Zhao Chunfang (deceased), Mao Yu, Jiang Jianping and Yang Jimin, the records of part singing segments of “*Tears of Prostitute*” and “*Dragon and Phoenix Flower Candle*” in “*Shanghai Drama Chronicles*”, and the music score of “*The Mother as Slave*”, proving that the disputed singing segments were not composed by Xu Ruhui, but Xu Ruhui is the composer of the scene music and the chorus.

2. Wan Zhiqing’s statement, the singing segments records of opera “*Luohan Money*”, “*A Single Spark*”, proving that the signature of an opera’s composition is not the same as the composer of the specific singing segments, Xu Ruhui cannot be the composer of Songhu Opera in Yang Feifei’s style.

3. A written certificate and signature on the tape issued by CRS and its opera editor Zheng Fen, proving that the defendant Ru Jinshan is only a staff member in the recording process of the above tape, the signature on the tape confirmed the scope of work, which should not bear any legal responsibility.

After the trial, the Plaintiffs did not accept the authenticity of the above evidence of the testimony issued by witnesses who did not appear in court but accept the rest. The Plaintiffs also argued that:

1. “*Shanghai Drama Chronicles*” did not specify the composer on music, it cannot deny the credit of Xu Ruhui’s composition; 2. The singing segments of “*Luohan Money*” and other plays lacked relevance to the case; 3. Evidence 3 cannot prove the defendant Ru Jinshan’s point of view.

The defendant CRS did not object to the above evidence provided by the defendant Ru Jinshan, and claimed: 1. the above witnesses were engaged in the performance and creation of Songhu Opera for decades, their testimony has a certain degree of authority and credit; 2. the defendant Ru Jinshan’s work was the orchestration of the conductor, which enriched the melody but made no adaptation to the work.

Based on the above-mentioned evidence and the cross-examination opinions of the parties concerned, **the Court authenticated as follows:**

1. The “*Songhu Opera Award Committee List*” in evidence 2 and 3 of group A provided by the Plaintiffs, the singing segments of “*A Single Spark*” in evidence 3 of group B provided by the defendant Ru Jinshan are not relevant to the copyright ownership of the singing segments or infringement determination in this case.

2. For the witness testimonies provided by both parties, none of the witnesses, except the witness Yang Feifei, appeared in court. According to Paragraph 1 of Article 55 of *The Several Provisions Of The Supreme People’s Court On Evidence In Civil Procedures*, “A witness shall testify in court and answer the inquiries of the parties concerned”, the Court affirmed the testimony of the witnesses Yang Feifei, Lu Caigen and Jiang Jianping for the witness Lu Caigen and Jiang Jianping have testified in court on the same fact in the case (Intellectual property No.355 of 2005 in Shanghai No. 1 Intermediate People’s Court). Another witness Zhao Chunfang has passed away when the court hearing held and his testimony can be confirmed with other documentary evidence and other witness’ testimony, so the court has affirmed this written testimony. As for other testimonies given by witnesses who are not present in court, the Plaintiffs raised an objection to the authenticity of the testimony, so the court did not affirm it.

3. All other evidence provided by the parties concerned are in conformity with the elements of authenticity, legality and relevance. As for the objections raised by the parties to the facts to be proved, which belong to the disputed issues, this court will make judgment after the facts are found.

Based on the evidence identified above, the Court finds the following facts:

On the performance announcement of the Songhu Opera “*The Mother as Slave*” published in the *Shanghai Xinmin Evening News* on November 4, 1954 and *Xinmin Evening News* on January 18, 1963, the composer’s name was “Shui Hui” and the performance unit was Qinyi Songhu Opera Troupe. On the performance programs of “*The Mother as Slave*” and “*Dragon and Phoenix Flower Candle*” printed by Qinyi Songhu Opera Troupe, as well as on the performance flyers of “*Tears of Prostitute*” and “*White Heron*”, the composer’s name was “Shui Hui”. Xu Ruhui, also known as Shui Hui, died on January 4, 1987, the plaintiffs Huang Nenghua, Xu Wenxia, Xu Wenlu, Xu Wenlei, Xu Wenting are Xu Ruhui’s wife and children.

The Shanghai Audio and Video Press published the tape of Songhu Opera “*The Mother as Slave*” in January 1990, and the instruction manual stated: accompanied by Qinyi Songhu Opera Troupe, recorded in September 1962, composer Shui Hui. The composer of segments of opera “*The Mother as Slave*” in “*Yang Feifei’s Songhu Opera Album*” published Shanghai Audio and Video Press was Shui Hui. There were also two composition records on the cover of the VCD “*Yang Feifei And Zhao Chunfang Art Collections*” published by CRS, one is Yang Feifei and the other is Shui Hui, which also contained the Songhu Opera “*Tears of Prostitute*” and “*Selling Red Water Chestnut*”. On August 4, 1986, Yang Feifei, Zhao Chunfang and Lu Caigen issued a written certificate in the name of the director and deputy director of the former Qinyi Songhu Opera Troupe, stating that in the middle of 1952, Xu Ruhui came to the former Qinyi Songhu Opera Troupe to work as a composer. When the Baoshan Songhu Opera Troupe was rebuilt, Xu Ruhui was hired to work as the composer and organizer of opera “*The Mother as Slave*”.

On April 16, 2004, the Literary Association sent a letter to CRS on behalf of Ms. Xu Wenxia, requesting CRS to immediately stop the infringement and pay financial compensation for copyright infringement of audio cassette “*Yang Feifei’s Famous Songhu Opera Songs Accompaniment Series III*” released by the company. On the 19th of the same month, CRS replied to the Literary Association, stating that “*Our company published the cassette “Famous Songhu Opera Songs Accompaniment Series III” in 1995. The singing segments were sung by Yang Feifei and these singing segments were not recorded for the first time..... It was a mistake of our work that the publication was not signed. Last year, when Ms. Xu Wenxia came to our company to look for her father’s works, she pointed out that there were similar problems in several publications, and we have explained and apologized in person. The publication of audio tape has been discontinued since 2000 and is no longer produced. What is sold in the market may be the unsold products in the stores. According to statistics, from 2000 to 2002, the annual sales of the audio tape was around a hundred boxes, while the cumulative sales in 2003 and from January to March this year were negative, i.e. the unsold products on the market were being returned, etc.*” In September of the same year, the Literary Association and CRS sent letters to each other again regarding the attribution rights, remuneration and marketing of Xu Ruhui’s works.

On August 25, 2005, the plaintiff Xu Wenxia bought a box of audio tapes “*Yang Feifei’s*

Famous Songhu Opera Songs Accompaniment Series III for CNY 6 in the Shanghai book city, Nanjing East Road Xinhua bookstore. Shanghai notary notarized the above purchase and issued Notarized Certificate under (2005) Shanghai Certificate No. 15491. On the cover of the cassette, it is written that the cassette was published and distributed by CRS, conducted by Ru Jinshan, accompanied by the folk orchestra of Shanghai Songhu Theatre and the string orchestra of Shanghai Symphony Orchestra. Side A of the cassette contains six singing segments, five of which the Plaintiffs claimed rights in this case: “*Tears of Prostitute*” (recorded in 1957) --- “*Yang’s Eight Songs*” *Fragment (I)*, “*Yang’s Eight Songs*” *Fragment (II)*, “*The Mother as Slave*” --- “*Homesickness*”(recorded in 1960), “*Dragon and Phoenix Flower Candle*” --- “*Today I Know that Spring is Always Here*” (recorded in 1960), “*White Heron*” --- “*The Green Leaves*” (recorded in 1959), with Side B being the music accompanying the singing segments of Side A . The reverse side of the tape contains the lyrics of the six singing segments and a brief introduction to Yang Feifei, which states: “Yang Feifei is a famous Songhu Opera performer. She constantly innovated her performance techniques, enriched the melody of her singing tune. She has created a set of singing tune with ‘soft’ as the main characteristic, which is known as ‘Yang’s Style’. Her famous singing segments include ‘*Yang’s Eight Songs*’ from opera ‘*Tears of a Prostitute*’, ‘*Four Phoenixes Sigh Alone*’ from ‘*Thunderstorm*’, ‘*Homesickness*’ from ‘*The Mother as Slave*’, ‘*Today I Know that Spring is Always Here*’ from ‘*The Dragon and Phoenix Flower Candle*’, ‘*The Green Leaves*’ from ‘*White Heron*’ and so on. All of which are deeply sorrowful, emotional and popular. The above wonderful singing is now re-orchestrated and recorded at”. In the attached singing words, the five singing segments are marked with the tune contained in the singing words. For example, in the singing segments of “*Yang’s Eight Songs*” *Fragment (I)*, the singing words of “*The Tears of Prostitute*” are labeled “[Phoenix Head Tune] *It is desolate on all sides*, [Circuitous Tune] *It is too bleak when I look back on the past*. [Chang Sansong Tune] *I was born with Lin*, [Middle Panel Tune] *The wedding night is really fierce*, [Singing Slow with Allegro Tune] *After the Anti-Japanese War*,”, also like [Singing Love Tune] in the singing segments of “*Yang’s Eight Songs*” *Fragment (I)*, [Four Seasons of Love tune] in singing segment “*Homesickness*” , [Anti Yin and Yang blood] in singing segment “*Today I know that spring is always here*”, [Singing Slow with Allegro] and [Anti Yin and Yang blood] in singing segment “*The Green Leaves*”.

The plaintiff paid CNY 10,000 yuan for attorney's fees, CNY 27.50 yuan for photocopying, CNY 2,000 yuan for notarization, CNY 30 yuan for documentary evidence, CNY 120 yuan for translation, CNY 40 yuan for file search and CNY 12 yuan for purchasing audio tapes. Plaintiff Xu Wenxia spent CNY 1,130 on airline tickets between China and Canada.

It was also found that the Shanghai Literature and Arts Press published the "*Songhu Opera Examination*" (revised version) (2nd edition, July 1963) with excerpts from "*The Tears of Prostitute*" [3 paragraph] and [4 paragraph], signed "Yang Feifei sings, Jing Guang records". *The Songhu Opera Magazine* (1st edition, December 1999) published by Shanghai Culture Press contains excerpts of the lyrics and music of Yang Feifei's "*Tears of Prostitute - Jin Yuan Sighs to Herself*" (commonly known as "Yang's Eight Songs"), signed "Yang Feifei sung, Huang Haibin wrote the score". The singing segment "*Mother hopes you will grow up peacefully and quickly*" in "*Dragon and Phoenix Flower Candle*" was recorded as sung by Yang Feifei and written by Chen Jinkun.

On October 14, 2005, the defendant CRS issued a certificate saying that the audio tape of "*Yang Feifei's Famous Songhu Opera Songs Accompaniment Series III*" was published and released by it in December 1995. The A side of the program was the famous singing segments of famous singers, and the B side was the accompaniment of the A side singing, which was necessary to organize the orchestra to re-record. Thus it hired Ru Jinshan of Shanghai Songhu Theatre to orchestrate the music of the singing and conduct the orchestra.

The witness Yang Feifei testified that the singing tune of "*Tears of Prostitute*" and other plays were basically designed by Yang Feifei herself and she also often studied with Zhao Chunfang and Mao Yu. A section of the singing tune need a lot of effort, then they would sang it to the chief Erhu player who would write down the score and then added the interlude, initially forming a singing tune. Later after practice, it would finally become a complete singing segment. According to the general practice, whoever plays the chief Erhu will write down the score, "*The Mother as Slave*" was written down by Huang Haibin, while "*Dragon and Phoenix Flower Candle*" and "*White Heron*" were written down by Chen Jinkun. Xu Ruhui was mainly responsible for writing the interlude, atmospheric music or chorus, because he was a new literary worker at that

time and he was not familiar with Songhu Opera, especially the four tunes in Shanghai dialect. Yang's singing style was the result of Yang Feifei's own adaptation and re-creation of traditional Songhu Opera tunes according to the needs of the play and his voice characters but not the composing. In 1995, Zheng Fen, the editor of Chinese Record Factory, discussed with Yang Feifei that he wanted to accompany the early works with a modern big band for the early singing voice was good, but the big unison band was no longer in line with the trend of the times. Yang Feifei agreed and recommended Ru Jinshan for the orchestration.

Witness Lu Caigen (also known as Lu Caigeng) testified that Xu Ruhui mainly used "Shui Hui" as his pseudonym and at that time Xu Ruhui was a professional composer of the Qinyi Songhu Opera Troupe, creating the prelude of the play, determining the final singing tune of the actors, the transitions between plays, the atmospheric music and the accompaniment. The tune was determined by the actors who performed the roles according to the lyrics and the entire play was finalized by Xu Ruhui.

Witness Jiang Jianping testified that he was the director of the former Qinyi Songhu Opera Troupe, and that the creation of opera was: the actors themselves designed their own singing tunes after getting the scripts, set their voices and tunes according to the needs of the scripts, and then had the chief Erhu write down the scores and practice singing, rehearsing and performing. Xu Ruhui and other new literary workers engaged in some music design work as composers and were responsible for writing the opening and closing music, chorus, orchestration and other work.

Witness Zhao Chunfang (deceased) gave two written testimonies on October 7 and October 18, 2005, stating that Xu Ruhui was a new literary artist at that time and was responsible for composing interlude songs and choruses in the Qinyi Songhu Opera Troupe since 1952. The singing tune of Songhu Opera was mainly composed and designed by Yang Feifei and other major actors according to their own voice characteristics and the needs of the emotions in the play, and then the musicians wrote down the score and revised it while singing, continuously improving it to form their own style.

The Court held that the five plaintiffs alleged that Xu Ruhui was the composer of the "*Yang Feifei's Famous Songhu Opera Songs Accompaniment Series III*" audio cassettes,

including “*Yang’s Eight Songs*” *Fragment (I)*, “*Yang’s Eight Songs*” *Fragment (II)*, “*Homesickness*”, “*Today I know that spring is always here*” and “*The Green leaves*” and the two defendants infringed the copyright of the five plaintiffs. Two defendants argued that Xu Ruhui was not the composer of the above five songs, the defendant Ru Jinshan was only the orchestrator conductor but not the composer, so the two defendants do not constitute infringement. **Based on the above-mentioned views of the parties, the main focus of dispute in this case is whether Xu Ruhui enjoys the copyright of the music in the five singing segments in dispute.**

From the performance announcement, the performance program and other evidence provided by plaintiff, operas “*The Mother as Slave*”, “*Dragon and Phoenix Flower Candle*”, “*Tears of Prostitute*”, “*White Heron*” performed by Qinyi Songhu Opera Troupe in the 1950s and 1960s all signed composer Shui Hui, namely Xu Ruhui. According to the relevant provisions of *Chinese Copyright Law*, if there is no evidence to the contrary, the citizen who signs his or her name on the work is the author. Therefore, according to the above-mentioned legal provisions and the performance announcement and other evidence provided by the plaintiff, it can be confirmed that the composer of Songhu Opera “*Tears of Prostitute*” and other plays was Shui Hui, namely Xu Ruhui based on the signature. However, the two defendants objected and provided contrary evidence on whether Xu Ruhui completed the singing segments of the disputed songs. Thus the court needs to conduct a comprehensive review of whether Xu Ruhui is the composer of the disputed songs in this case in conjunction with the evidence provided by the parties.

The music of the four Songhu Operas, including “*Tears of Prostitute*”, consisted of two parts: the singing tune and the accompaniment. Both the plaintiff and the defendant in this case produced witness testimony to prove the scope of Xu Ruhui’s duties as a composer in the former Qinyi Songhu Opera Troupe and the composition of the disputed singing segments. The defendant’s witness Yang Feifei testified that Xu Ruhui, as the full-time composer of the Qinyi Songhu Opera Troupe, was mainly responsible for writing the music for scenes such as interludes, but as a new literary worker at that time, he was not familiar with the Shanghai dialect. The singing tune of the Songhu Opera such as “*Tears of Prostitute*” was designed by Yang Feifei based on traditional tunes. At the same time, the plaintiff’s witness Lu Caigen testified that Xu Ruhui mainly composed the prelude , transitions, atmospheric music, etc. The tune was determined

by the actors performing the role according to the lyrics and was finalized and improved by Xu Ruhui. The witness testimonies provided by both parties are basically the same as the testimonies given by Xu Ruhui in the composition range of the former Qinyi Songhu Opera Troupe, and all the witnesses are members of the troupe, so the above-mentioned witness testimonies are admissible. Even if the witness Lu Caigen also said, “the tune was determined by the actors performing the role according to the singing words, the whole play was finalized and improved by Xu Ruhui, etc.”, it affirms that Xu Ruhui finalized and improved the tune, but also clear that the tune of was determined by the actors not composed by Xu Ruhui. Therefore, even if the above-mentioned testimony of “improving and finalizing” is true, it cannot prove that Xu Ruhui is the composer of the disputed singing segments with no other specific evidence.

Moreover, the above-mentioned witness testimony also affirmed that Xu Ruhui composed the scene music for the four Songhu Operas, such as “*Tears of Prostitute*”, and the two defendants also approved of this, the Court held that Xu Ruhui signed the music on the performance announcement of “*Tears of Prostitute*” and other Songhu Operas representing that Xu Ruhui composed the music for scenes, but his compositions did not include the singing tune of the singing segments.

The adoption of the two defendants’ opinions is not only based on the adoption of witnesses’ testimony, but also on the fact that it accords with the development of Chinese traditional opera, especially Songhu Opera. Songhu Opera is a local opera in Shanghai, which originated from folk songs and slang in Shanghai, Jiangsu and Zhejiang. Songhu Opera gradually formed its rich and colorful tunes and unique style after influenced by other folk songs and operas. Songhu Opera tunes are mainly divided into two categories: Banqiang tune and Qupai tune. Banqiang tune contains some variants of the board style with long tunes as the main part, supplemented by such short tunes as [Roundabout Tune], [Three Deliveries Tune] and other Jiangnan folk ditties such as [Night Tour Tune]. Most of the Qupai tunes are folk tunes of the Ming and Qing Dynasties and tunes in other operas like [Night Tour Tune] and [Four Seasons Love Tune]. On the inner cover of the tape of “*Yang Feifei’s Famous Songhu Opera Songs Accompaniment Series III*”, the five singing segments clearly indicate [Phoenix Head Tune], [Devious Callback Tune], [Long Three Delivers Tune], [Medium Board Tune], [Singing Slow with Allegro Tune], [Four Seasons Love Tune] and other traditional tunes used in the above singing segments. The extensive use of these traditional tunes can also confirm the testimony of witnesses Yang Feifei and others.

On the other hand, all the singing segments in this case show the “Yang (Feifei) ’s Style” singing tune. Yang Feifei claimed that the Yang’s style was evolved based on the traditional tunes of Songhu Opera according to the needs of the play and her voice character, and was not the result of composing. The above opinion of Yang Feifei is also in line with the general rules of the formation and development of opera genre, for the formation of opera styles is usually based on the actors’ feelings about the art and script, their understanding and portrayal of the characters in the opera, their own vocal conditions and different approaches to singing and singing methods. In the process of performing, an actor’s unique performance style is gradually recognized by the audience through the role he or she plays, and after his or her original performance style has gained a certain popularity, it is called a Style. Since the five singing segments like “*Yang’s Eight Songs*” are all classical segments representing the Yang’s singing style, Yang Feifei’s claim that the singing tune in “*Yang’s Eight Songs*” and other segments was adapted and composed by her on the basis of traditional Songhu Opera tunes is admissible to the Court. At the same time, the accompaniment music in opera music is designed to follow the singing and to support the singing, the accompanist is generally familiar with the content of the singing and the singing skills and methods of the singer, so that it can play a role in filling the gaps between the actor’s singing, strengthening the strength of the actor’s singing and setting the mood of the play. In the present case, Yang Feifei testified that the Songhu Operas she performed in the 1950s and 1960s were accompanied by the chief Erhu and notation, such as Huang Haibin for “*The Mother as Slave*” and Chen Jinkun for “*Dragon and Phoenix Flower Candle*” and “*White Heron*”. They notated the score and then added the passages to form a singing tune. Therefore, the music accompanying the singing tune in the five segments should be the result of the cooperation among Huang Haibin, other chief Erhu and Yang Feifei.

Accordingly, the court believes that the music in “*Tears of Prostitute*”, “*The Mother as Slave*”, “*Dragon and Phoenix Flower Candle*” and “*White Heron*” performed by the former Qinyi Songhu Opera Troupe in the 1950s and 1960s was not created by a person alone. The copyright shall not be owned by Xu Ruhui alone as the Plaintiffs’ complaint, it was created by Yang Feifei, Xu Ruhui, Huang Haibin and other actors and actresses on the basis of the traditional opera music jointly. Among them, the singing tune was mainly created by Yang Feifei and other actors based on traditional tunes, while the accompanying music for scene music and singing music was composed by Xu Ruhui

and other professional composers and accompanists such as the chief Erhu according to their different divisions of labor. The music composed by Xu Ruhui was inseparable from the entire play, as he mainly composed the prelude, interval, closing, theme and chorus music, which play a role in rendering the atmosphere, adjusting the rhythm of the performance and unifying the structure of each play. The “*Yang Feifei’s Famous Songhu Opera Songs Accompaniment Series III*” tape selected the classical singing in the Songhu Opera “*Tears of Prostitute*” and other plays, in which the music is mainly the singing tune and the accompaniment music. Therefore, the legal basis for the request of the five plaintiffs to protect Xu Ruhui’s right of attribution and other personal rights as well as their inherited copyright property rights for the case of “*Yang’s Eight Songs*” and other five classical singing segments is insufficient, which cannot be supported.

In addition, it can be seen from the introduction of the inner cover of the tape *Yang Feifei’s Famous Songhu Opera Songs Accompaniment Series III*” and the statements of the two defendants and the witness Yang Feifei that the A-side of the tape uses the recording of Yang Feifei’s singing in 1960 together with the music played by the Shanghai Songhu Theatre Folk Orchestra and the Shanghai Symphony Orchestra in 1995 and conducted by Ru Jinshan. Therefore, the defendant Ru Jinshan, acted as an “orchestrator and conductor” rather than a composer during the production of the tapes. The composer and conductor are both different from the composer. The orchestrator needs to use a variety of instruments individually or together to express the melody of the music, and the same score with different orchestration methods will have different musical effects. For example, the orchestration of early Songhu Operas used purely folk music instruments, while the musical accompaniment of 1995 tapes used both folk band and string orchestra for orchestration. On the other hand, the conductor is responsible for controlling and mastering the rhythm of the orchestra, playing the role of organization and coordination in the process of orchestra performance and directly expressing the composer’s musical idea and the effect of the music through performance. Therefore, the plaintiff’s allegation of infringement of the composer’s rights based on the defendant’s signature of “orchestration conductor” on the tape is not supported by the court.

In summary, the claim of the five plaintiffs in this case that the two defendants infringed their copyright lacks facts and legal basis, which cannot be supported by the Court. In accordance with Article 64(1) of *the Civil Procedure Law of the People’s*

Republic of China and Article 3(3) of the *Copyright Law of the People's Republic of China*, the judgment is as follows:

The request of plaintiff Huang Nenghua, Xu Wenxia, Xu Wenlu, Xu Wenlei, Xu Wenting shall not be supported.

The case acceptance fee of CNY 3,901 shall be borne by the plaintiff Huang Nenghua, Xu Wenxia, Xu Wenlu, Xu Wenlei and Xu Wenting.

If the parties do not accept this judgment, the plaintiff Huang Nenghua, Xu Wenxia, Xu Wenting may appeal to the Shanghai Higher People's Court within thirty days from the date of service of the judgment and the plaintiff Xu Wenlu, Xu Wenlei, the defendant CRS and Ru Jinshan may appeal to this court within fifteen days from the date of service of the judgment, and file a copy according to the number of the other party.

Chief Judge: Liu Hong

Acting Trial Judge: Zhang Liping

Acting Trial Judge: Xu Yanhua

February 20, 2007

Clerk: Liu Xiaojing