

# **USA: Flo & Eddie, Inc. v. Sirius XM Radio, Inc, United States Court of Appeals, Second Circuit, No. 15-1164-cv, 16 February 2017**

## **Kluwer Copyright Blog**

February 24, 2017

Thomas Long

*Please refer tot his post as: Thomas Long, 'USA: Flo & Eddie, Inc. v. Sirius XM Radio, Inc, United States Court of Appeals, Second Circuit, No. 15-1164-cv, 16 February 2017', Kluwer Copyright Blog, February 24 2017,*

*<http://kluwercopyrightblog.com/2017/02/24/copyright-flo-eddie-inc-v-sirius-xm-radio-inc-united-states-court-of-appeals-second-circuit-no-15-1164-cv-16-february-2017/>*

---

Flo & Eddie, Inc.—owner of recordings by 1960s pop group The Turtles and created by former Turtles vocalists Mark “Flo” Volman and Howard “Eddie” Kaylan—has sustained a decisive blow in its attempt to recover damages from satellite and Internet broadcaster Sirius XM Radio for broadcasting and reproducing pre-1972 sound recordings without permission—at least with respect to its claims under New York state copyright law. The latest decision by the U.S. Court of Appeals in New York City comes as little surprise, since in December 2016, New York Court of Appeals, responding to a certified question, held that there was no right of public performance for creators of pre-1972 sound recordings under New York common law. The Second Circuit concluded today that the answer to the certified question was determinative and has remanded the case to the federal district court with instructions to grant Sirius XM’s motion for summary judgment and to dismiss the case with prejudice (Flo & Eddie, Inc. v. Sirius XM Radio, Inc., February 16, 2017, per curiam.)

A full summary of this case has been published on [Kluwer IP Law](#)

Blog