

Sirius XM Playing Pre-1972 Songs Violates California Copyright Statute

Two of the founders of The Turtles won a summary judgment on the issue of liability against Sirius XM Radio Inc., finding the satellite service liable because it did not have the right to broadcast the band's original recordings.

Howard Kaylan and Mark Volman own Flo & Eddie Inc., a company that owns the original master sound recordings of The Turtles, including "Happy Together" and "It Ain't Me Babe," among others. Through its satellite and Internet radio services, Sirius XM without licensing or paying royalties has publicly performed 15 separate pre-1972 sound recordings owned exclusively by Flo & Eddie.

Flo & Eddie sued Sirius XM for \$100 million under California's copyright and unfair competition laws and for common law misappropriation and conversion. The action was removed to federal court. Flo & Eddie brought the action under California's copyright law, rather than federal law, because the U.S. Copyright Act specifically excludes pre-1972 sound recordings from the Act, leaving it to the individual states to regulate the earlier recordings.

Sirius XM argued that because it purchased a copy of Flo & Eddie's recordings, it had the right to broadcast the recordings without requesting permission or paying any royalties. The court found that California's copyright law grants the owner of sound recordings the exclusive right to publicly perform the recordings. As a result, Sirius XM infringed Flo & Eddie's California copyright.

The court found Sirius XM violated California's Unfair Competition Law because it had no right to publicly perform any of the recordings. The court also granted Flo & Eddie's motion for summary judgment for the common law claims of misappropriation and conversion.

The court found there were disputed facts relating to Flo & Eddie's claim concerning Sirius XM's backing up the recordings in libraries and databases, copying "tips and tails" of the recordings, and "buffer copies."

The motion for summary judgment decided only the issue of liability, not damages.

Flo & Eddie Inc. v. Sirius XM Radio Inc., C.D. Calif., issued September 22, 2014