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Flo & Eddie, Inc. v. Sirius XM Radio, Inc.: Public Performance Rights for Pre-1972 Sound Recordings

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Historically, radio broadcasters have never paid royalties to rightsholders in sound recordings made before 1972 because it was assumed that there were no public performance rights for such recordings. This was challenged recently when former Turtles members, Flo & Eddie, brought suit in California against Sirius XM, successfully arguing that state law confers a public performance right in pre-1972 sound recordings. This Comment examines the outcome of Flo & Eddie's case, arguing, among other things, that the court improperly overlooked important policy implications. The Comment then proposes that Congress impose a federal standard for pre-1972 sound recordings, thereby preempting state laws, many of which are poorly construed.