

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of December, two thousand sixteen.

PRESENT: GUIDO CALABRESI,
DENNY CHIN,
SUSAN L. CARNEY,
Circuit Judges.

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FLO & EDDIE, INC., a California Corporation,
individually and on behalf of all others similarly
situated,

Plaintiff-Appellee,

v.

ORDER
15-1164-cv

SIRIUS XM RADIO, INC., a Delaware Corporation,
Defendant-Appellant,

DOES, 1 THROUGH 10,
Defendants.

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On April 13, 2016, we certified to the New York Court of Appeals the following question in this case: "Is there a right of public performance for creators of sound recordings under New York law and, if so, what is the nature and scope of that right?"

On December 20, 2016, the New York Court of Appeals, in an extensive opinion, with a concurrence and a dissent, answered our question in the negative.

The parties are directed to submit a letter brief of no more than twelve pages, double-spaced, by January 16, 2017, addressing the effect of the New York Court of Appeals' decision on the appeal before us.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


