

COURTESY NOTICE OF INTENT TO FILE AMICUS CURIAE – TO POTENTIALLY INTERESTED BAR GROUPS

September 22, 2016

To: Leadership of the Business Law Section of the Florida Bar

From: The Florida Bar Entertainment, Arts and Sports Law Section

Re: Proposed Amicus Curiae Position re Flo & Eddie, Inc. v. Sirius XM Radio, Inc.

The Florida Bar Entertainment, Arts and Sports Law Section (“EASL”) hereby provides the Business Law Section of the Florida Bar courtesy notice of EASL’s intention to file an amicus curiae brief in the matter of Flo & Eddie, Inc. v. Sirius XM Radio, Inc.

The issue before the Florida Supreme Court is:

1. Whether Florida recognizes common law copyright in sound recordings and, if so, whether that copyright includes the exclusive right of reproduction and/or the exclusive right of public performance?
2. To the extent that Florida recognizes common law copyright in sound recordings, whether the sale and distribution of phonorecords to the public or the public performance thereof constitutes a “publication” for the purpose of divesting the common law copyright protections in sound recordings embedded in the phonorecord and, if so whether the divestment terminates either or both of the exclusive right of public performance and the exclusive right of reproduction?

The Position of the EASL Section is:

1. The Florida Legislature recognized the existence of common-law copyright in sound Recordings in 1941 When It passed legislation specifically repealing those common law rights, located in Chapter 543 Florida Statutes.
2. The repeal of Chapter 543 in 1977 revived the common law rights of sound recordings
3. Publication of a sound recording does not divest it of common law rights, absent the existence of a Federal right to the same. Since there has never been Federal copyright protection for pre-1972 sound recordings, publication of a sound recording is incapable of divesting the common law rights in the same.

As you may know, Florida Bar policies specify that such amicus proposals be circulated to all divisions, sections and committees that might be interested in this issue, and that any request of the Bar for action on our request should identify all such groups to which this notice has been submitted for comment, further reciting any responses received. We thought your Business Law Section might be interested in this matter.

A copy of EASL’s proposed amicus submission is enclosed for your further review. I hope that your Business Law Section would look favorably on this request or at least express no opposition to it.

Thank you for your consideration of this request. And, if I can provide you further information regarding this matter, please let me know.

Sincerely,

/s/ Charlotte Towne

Charlotte Towne

2016-2017 Chair of the Florida Bar

Entertainment, Arts and Sports Law Section