

FUNCTION (X) INC.  
Form S-1  
May 25, 2011

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As filed with the Securities and Exchange Commission on [\_\_\_\_], 2011  
Registration No. 333-

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

FUNCTION (X) INC.  
(Exact name of registrant as specified in its charter)

Delaware	7370	33-0637631
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

159 East 70th Street  
New York, New York 10021  
212-231-0092

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Robert F.X. Sillerman  
Executive Chairman  
159 East 70th Street  
New York, New York 10021  
212-231-0092

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Christopher S. Auguste, Esq.  
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1177 Avenue of Americas  
New York, New York 10036  
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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer  Accelerated Filer   
 Non-Accelerated Filer  (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be offered	Amount of shares to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common stock, par value \$0.001 per share	13,232,597	\$11.00 (2)	\$145,558,567.00	\$16,899.35
Common stock, par value \$0.001 per share	940,000	\$11.00 (2)	\$10,340,000.00	\$1,200.47
Common stock, par value \$0.001 per share	250,000	\$11.00 (2)	\$2,750,000.00	\$319.28
Common stock, par value \$0.001 per share	100,000	\$11.00 (3)	\$1,100,000.00	\$127.71
Total	14,522,597	\$11.00	\$159,748,567.00	\$18,546.81

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(1) In accordance with Rule 416(a), the Registrant is also registering hereunder an indeterminate number of shares that may be issued and resold resulting from stock splits, stock dividends or similar transactions.

(2) Estimated pursuant to Rule 457(c) of the Securities Act of 1933 solely for the purpose of computing the amount of the registration fee based on the average of the high and low prices reported on the over-the-counter market on May 24, 2011.

(3) Calculated in accordance with Rule 457(g) based upon the price at which the warrants were exercised.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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PROSPECTUS

Subject to completion, dated [\_\_\_\_], 2011

FUNCTION (X) INC.

14,522,597 Shares of Common Stock

This prospectus relates to an aggregate of 14,522,597 shares of common stock, par value \$0.001 per share, of Function (X) Inc., a Delaware corporation, that may be sold from time to time by one of the selling stockholders named in this prospectus.

None of the selling stockholders named in this prospectus are members of management or employees of the Company. We will not receive any proceeds from the sales of any shares of common stock by the selling stockholders.

Our common stock currently trades in the over-the-counter market and is quoted on the Pink Sheets Electronic Quotation Service under the symbol "FNCX". The closing price for our common stock on May 24, 2011 was \$11.00 per share.

Investing in our common stock involves a high degree of risk. See the section entitled "Risk Factors" beginning on page 4 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The information in this prospectus is not complete and may be changed. No person may sell the securities described in this document until the registration statement filed with the Securities and Exchange Commission is declared effective. This prospectus is not an offer to sell these securities and no person named in this prospectus is soliciting offers to buy these securities in any state where the offer or sale is not permitted.

The date of this prospectus is [\_\_\_\_], 2011

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## PROSPECTUS SUMMARY

The following summary highlights some of the information contained in this prospectus, and it may not contain all of the information that is important to you in making an investment decision. You should read the following summary together with the more detailed information regarding our company and the common stock being sold by the selling stockholders in this offering, including the “Risk Factors” and our financial statements and related notes, included elsewhere in this prospectus.

### Conventions

In this prospectus, unless indicated otherwise,

- “Function (X),” “Company,” “we,” “us” and “our” refer to Function (X) Inc.
- “U.S. dollar,” “\$” and “US\$” refer to the legal currency of the United States.

### The Company

#### Overview of Our Business

Upon completion of our recapitalization of the Company in February 2011 (the “Recapitalization”), the Company changed course after being inactive from October 2010. Its new direction will provide a platform for investments in media and entertainment, with a particular emphasis on digital and mobile technology. The Company is evaluating several initiatives aimed at combining certain established business principles with a new element enabled by digital and mobile distribution capabilities. The Recapitalization and the resulting change in management were the initial steps in the Company developing a new operating business. An initial product under consideration would emphasize Smartphone applications, with a goal of being ready for beta testing in the third quarter of 2011. The Company is not disclosing any details about this product for competitive reasons, and because this product has not reached the stage of a specific plan for its commercial adaptation.

From October 2010, after the Company completed the disposition of its interest in Oaktree Systems, Inc. (“Oaktree”) through the date of the Recapitalization in February 2011, the Company was not active and had no operating business, but after the disposition of the Oaktree interest the Company was exploring the possibility of identifying and merging with or investing in one or more operating businesses. For a description of the Company’s previous business, please see the section entitled “Organizational Structure” below.

#### Organizational Structure

Function (X) was incorporated in Delaware in July 1994, and was formerly known as Gateway Industries, Inc. We had no operating business or full-time employees from December 1996 to March 2000, when we acquired all of the outstanding common stock of Oaktree. Through Oaktree, we provided cost effective marketing solutions to organizations needing sophisticated information management tools.

We acquired Oaktree on March 21, 2000 pursuant to a stock purchase agreement. The purchase price of Oaktree was approximately \$4,100,000, consisting of \$2,000,000 in cash, the issuance of 600,000 restricted shares of common stock of the Company and the assumption of approximately \$650,000 of debt, which was repaid at the closing date, plus certain fees and expenses. In December 2007, Oaktree sold 5,624 shares of its common stock to Marketing Data, Inc., an affiliate of an officer of Oaktree, for \$1,000. As a result, our ownership interest in Oaktree was reduced to

20% of Oaktree's outstanding common stock. In connection with this transaction, we agreed to

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make a capital contribution of \$225,000 to Oaktree at closing. As a result of this transaction, we recorded a loss on sale of subsidiary in the amount of \$4,238,392 during the year ended December 31, 2007.

In July 2005, we sold 500,000 shares of 10% series A preferred stock to Steel Partners II, L.P. (“Steel Partners II”), an affiliate of Jack L. Howard, who was at the time our Chairman of the Board and Chief Executive Officer and our largest stockholder, for a purchase price of \$1,467,000. In addition, we sold to Steel Partners II warrants to purchase 1,500,000 shares of common stock, with an exercise price of \$0.22 per share, for a purchase price of \$33,000. On May 15, 2008, we repurchased all of the preferred stock and warrants originally issued to Steel Partners II for a purchase price of \$1,000. None of the warrants were ever exercised by Steel Partners II and no dividend was paid on the preferred stock.

On October 24, 2010, Oaktree repurchased our remaining 20% interest in Oaktree for \$100. As a result, Marketing Data, Inc. owned 100% of the outstanding common stock of Oaktree.

Since the disposition of our interest in Oaktree, we began to explore the redeployment of our existing assets by identifying and merging with, or acquiring, or investing in, one or more operating businesses.

On February 11, 2011, we completed a Recapitalization with Sillerman Investment Company, LLC, a Delaware limited liability company (“Sillerman”) and EMH Howard LLC, a New York limited liability company (“EMH Howard”) and changed our name to Function (X) Inc. Prior to that date we did not engage in active business operations.

#### Risk Factors

Our ability to successfully operate our business and achieve our goals and strategies is subject to numerous risks as discussed more fully below in the section entitled “Risk Factors,” including, but not limited to, the following:

- Not currently generating revenue;
- Fluctuation in the price of our common stock;
- Thinly traded market for purchases and sales of our common stock;
- Potential inability to achieve business objective;
- Potential inability to obtain financing for Company operations or of any particular product;
  - Increased competition;
  - Highly competitive industry;
- Potential loss of key members of our senior management; and
  - Ability to obtain and enforce proprietary rights.

Any of the above risks could materially and adversely affect our business, financial position and results of operations. An investment in our common stock involves risks. You should read and consider the information set forth below in the section entitled “Risk Factors” and all other information set forth in this prospectus before investing in our common stock.

Corporate Information

The address of our principal executive office is 159 East 70th Street, New York, New York 10021, and our telephone number is 212-231-0092.

Summary of the Offering

Common stock offered by selling stockholders An aggregate of 14,522,597 shares of our common stock, par value \$0.001 per share, consisting of 14,522,597 shares of our common stock owned by the selling

stockholders. This number represents in the aggregate approximately 10.8% of the outstanding shares of our common stock as of the date of this prospectus. (1) None of the selling stockholders named in this prospectus are members of management or employees of the Company.

Common stock to be outstanding immediately after this offering 134,522,597 shares

Proceeds to us We will not receive any of the proceeds from the sale of shares of our common stock by the selling stockholders.

(1) Based on 134,522,597 shares of common stock outstanding as of May 24, 2011.

## RISK FACTORS

The shares of our common stock being offered for resale by the selling stockholders are highly speculative in nature, involve a high degree of risk and should be purchased only by persons who can afford to lose their entire investment in our common stock. Before purchasing any of the shares of our common stock, you should carefully consider the following factors relating to our business and prospects. If any of the following risks actually occur, our business, financial condition or operating results may suffer, the trading price of our common stock could decline, and you may lose all or part of your investment. You should also refer to the other information about us contained in this prospectus, including our financial statements and related notes.

We have a limited operating history that you can use to evaluate us, and the likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays frequently encountered by a small developing company.

We have limited financial resources and no revenues to date. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays frequently encountered by a small developing company starting a new business enterprise and the highly competitive environment in which we will operate. Since we have a limited operating history, we cannot assure you that our business will be profitable or that we will ever generate sufficient revenues to fully meet our expenses and totally support our anticipated activities.

Our ability to continue as a business and implement our business plan will depend on our ability to raise sufficient debt or equity. There is no assurance such debt and/or equity offerings will be successful or that we will remain in business or be able to implement our business plan if the offerings are not successful.

We need substantial additional financing to execute our business plan which may not be available. If we are unable to raise additional capital, we may not be able to continue operations.

We do not yet have revenues and our ability to continue in business depends upon our ability to obtain working capital. There can be no assurance that any such financing would be available upon terms and conditions acceptable to us, if at all. The inability to obtain additional financing in a sufficient amount when needed, and upon acceptable terms and conditions could have a material adverse effect upon us. If additional funds are raised by issuing equity securities, further dilution to existing or future stockholders is likely to result.

We may seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing capital stock that would dilute your ownership.

We have financed our operations, and we expect to continue to finance our operations, acquisitions and develop strategic relationships, by issuing equity or convertible debt securities, which could significantly reduce the percentage ownership of our existing stockholders. Furthermore, any newly issued securities could have rights, preferences and privileges senior to those of our existing stock. Moreover, any issuances by us of equity securities may be at or below the prevailing market price of our common stock and in any event may have a dilutive impact on your ownership interest, which could cause the market price of stock to decline. We may also raise additional funds through the incurrence of debt or the issuance or sale of other securities or instruments senior to our shares of common stock. The holders of any debt securities or instruments we may issue would have rights superior to the rights of our common stockholders.

Our common stock price may fluctuate significantly.

Because we are a newly operating company, there are few objective metrics by which our progress may be measured. Consequently, we expect that the market price of our common stock will likely fluctuate significantly. There can be no assurance whether or when we will generate revenue from the license, sale or delivery of our unique products and services. In the absence of product revenue as a measure of our operating performance, we anticipate that investors and market analysts will assess our performance by considering factors such as:

- announcements of developments related to our business;
- developments in our strategic relationships with companies;
- our ability to enter into or extend investigation phase, development phase, commercialization phase and other agreements with new and/or existing partners;
  - announcements regarding the status of any or all of our collaborations or products;
  - market perception and/or investor sentiment regarding our products and services;
- announcements regarding developments in the digital and mobile technology and entertainment industries in general;
  - the issuance of competitive patents or disallowance or loss of our patent or trademark rights; and
    - quarterly variations in our operating results.

We will not have control over many of these factors but expect that our stock price may be influenced by them. As a result, our stock price may be volatile and you may lose all or part of your investment.

The market for purchases and sales of our common stock may be very limited, and the sale of a limited number of shares could cause the price to fall sharply.

Our securities are very thinly traded. Accordingly, it may be difficult to sell shares of the common stock without significantly depressing the value of the stock. Unless we are successful in developing continued investor interest in our stock, sales of our stock could continue to result in major fluctuations in the price of the stock.

We do not intend to declare dividends on our common stock.

We will not distribute cash to our stockholders until and unless we can develop sufficient funds from operations to meet our ongoing needs and implement our business plan. The time frame for that is inherently unpredictable, and you should not plan on it occurring in the near future, if at all.

We are controlled by current insiders and affiliates of the Company.

Approximately 110,538,000 shares of our common stock, not including currently exercisable warrants, are owned by current affiliates and insiders representing control of approximately 82% of the total voting power.

As result of the closing of the Recapitalization, as discussed more fully below in the section entitled “Our Business,” Sillerman, together with other investors approved by Sillerman, owns approximately 89% of the outstanding shares of common stock, with Sillerman (together with Robert F.X. Sillerman personally) directly or indirectly beneficially owning more than a majority of the outstanding shares of common stock. As a result, Sillerman essentially has the ability to elect all of our directors and to approve any action requiring stockholder action, without the vote of any other stockholders. It is possible that the interests of Sillerman could conflict in certain circumstances with those of other stockholders.

We rely on key members of management, the loss of whose services could adversely affect our success and development.

Our success depends to a certain degree upon certain key members of the management. These individuals are a significant factor in our growth and ability to meet our business objectives. In particular, our success is highly dependent upon the efforts of our executive officers and our directors, particularly Robert F.X. Sillerman, our Executive Chairman and Director. The loss of our executive officers and directors could slow the growth of our business, or it may cease to operate at all, which may result in the total loss of an investor's investment.

Compensation may be paid to our officers, directors and employees regardless of our profitability.

Robert F.X. Sillerman, our Executive Chairman and director and Janet Scardino, our Chief Executive Officer and director are receiving compensation and any future employees of our company may be entitled to

receive compensation, payments and reimbursements regardless of whether we operate at a profit or a loss. Any compensation received by Mr. Sillerman, Ms. Scardino or any other senior executive in the future will be determined from time to time by the board of directors or our Compensation Committee. Such obligations may negatively affect our cash flow and our ability to finance our business plan, which could cause our business to fail.

Our business and growth may suffer if we are unable to attract and retain key officers or employees.

Our success depends on the expertise and continued service of our Executive Chairman, Robert F.X Sillerman, and certain other key executives and technical personnel. It may be difficult to find a sufficiently qualified individual to replace Mr. Sillerman or other key executives in the event of death, disability or resignation, resulting in our being unable to implement our business plan and the Company having no operations or revenues.

Furthermore, our ability to expand operations to accommodate our anticipated growth will also depend on our ability to attract and retain qualified media, management, finance, marketing, sales and technical personnel. However, competition for these types of employees is intense due to the limited number of qualified professionals. Our ability to meet our business development objectives will depend in part on our ability to recruit, train and retain top quality people with advanced skills who understand our technology and business. The Company believes that it will be able to attract competent employees, but no assurance can be given that the Company will be successful in this regard. If the Company is unable to engage and retain the necessary personnel, its business may be materially and adversely affected.

We are uncertain of our ability to manage our growth.

Our ability to grow our business is dependent upon a number of factors including our ability to hire, train and assimilate management and other employees, the adequacy of our financial resources, our ability to identify and efficiently provide such new products and services as our customers may require in the future and our ability to adapt our own systems to accommodate expanded operations.

Because of pressures from competitors with more resources, we may fail to implement our business strategy profitably.

The digital and mobile technology business is highly fragmented and extremely competitive. The market for customers is intensely competitive and such competition is expected to continue to increase. We believe that our ability to compete depends upon many factors within and beyond our control, including the timing and market acceptance of new solutions and enhancements to existing businesses developed by us, our competitors, and their advisors. Function (X) is an entertainment company that utilizes digital media and Smartphone technology. If we are successful, larger and more established entertainment companies with significantly greater resources may try to enter the market with similar technologies, and may be in better competitive positions than we are. We cannot be sure that we will be able to successfully implement our business strategy in the face of such competition.

We may be unable to compete with larger or more established companies in two industries.

We face a large and growing number of competitors in the digital and mobile technology and entertainment industries. If we successfully marry digital and mobile technology and entertainment, we will have competitors from both the digital and mobile and the entertainment industries. Many of these competitors have substantially greater financial, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition, and more established relationships in the industry than does the Company. As a result, certain of these competitors may be in better positions to compete with us for customers and audiences. We cannot be sure that we



will be able to compete successfully with existing or new competitors.

If our products do not achieve market acceptance, we may not have sufficient financial resources to fund further development.

While we believe that a viable market exists for the products we are developing, there can be no assurance that such technology will prove to be an attractive alternative to conventional or competitive products in the markets that we have identified for exploitation. In the event that a viable market for our products cannot be created as envisaged by our business strategy or our products do not achieve market acceptance, we may need to commit greater resources than are currently available to develop a commercially viable and competitive product. There can be no assurance that we would have sufficient financial resources to fund such development or that such development would be successful. Our ability to raise additional funds will depend on financial, economic and other factors, many of which are beyond our control. There can be no assurance that, when required, sufficient funds will be available to us on satisfactory terms.

We cannot guarantee that our products will perform as expected, or that we will be able to successfully develop and market our products.

With the release of any new product release, we are subject to the risks generally associated with new product introductions and applications, including lack of market acceptance, delays in development and implementation, and failure of products to perform as expected. In order to introduce and market new or enhanced products successfully with minimal disruption in customer purchasing patterns, we must manage the transition from existing products in the market. There can be no assurance that we will be successful in developing and marketing, on a timely basis, product enhancements or products that respond to technological advances by others, that our new products will adequately address the changing needs of the market or that we will successfully manage product transitions. Further, failure to generate sufficient cash from operations or financing activities to develop or obtain improved products and technologies could have a material adverse effect on our results of operations and financial condition.

Our business will suffer if our network systems fail or become unavailable.

A reduction in the performance, reliability and availability of our network infrastructure would harm our ability to distribute our products to our users, as well as our reputation and ability to attract and retain users and content providers. Our systems and operations could be damaged or interrupted by fire, flood, power loss, telecommunications failure, Internet breakdown, earthquake and similar events. Our systems could also be subject to viruses, break-ins, sabotage, acts of terrorism, acts of vandalism, hacking, cyber-terrorism and similar misconduct. We might not carry adequate business interruption insurance to compensate us for losses that may occur from a system outage. Any system error or failure that causes interruption in availability of products or an increase in response time could result in a loss of potential customers or content providers, which could have a material adverse effect on our business, financial condition and results of operations. If we suffer sustained or repeated interruptions, then our products and services could be less attractive to our users and our business would be materially harmed.

We may be unable to protect our intellectual property rights from third-party claims and litigation.

Our success is dependent in part on obtaining, maintaining and enforcing our proprietary rights and our ability to avoid infringing on the proprietary rights of others. We seek patent protection for those inventions and technologies for which we believe such protection is suitable and is likely to provide a competitive advantage to us. Because patent applications in the United States are maintained in secrecy until either the patent application is published or a patent is issued, we may not be aware of third-party patents, patent applications and other intellectual property relevant to our products that may block our use of our intellectual property or may be used in third-party products that compete with our products and processes. In the event a competitor successfully challenges our products, processes, patents or licenses or claims that we have infringed upon their intellectual property, we could incur substantial litigation costs defending against such claims, be required to pay royalties, license fees or other damages or be barred

from using the intellectual property at issue, any of which could have a material adverse effect on our business, operating results and financial condition.

We also rely substantially on trade secrets, proprietary technology, nondisclosure and other contractual agreements, and technical measures to protect our technology, application, design, and manufacturing know-how, and work actively to foster continuing technological innovation to maintain and protect our competitive position.

We cannot assure you that steps taken by us to protect our intellectual property will be adequate, that our competitors will not independently develop or patent substantially equivalent or superior technologies or be able to design around patents that we may receive, or that our intellectual property will not be misappropriated.

Changes to federal, state or international laws or regulations applicable to our business could adversely affect our business.

Our business is subject to a variety of federal, state and international laws and regulations, including those with respect to privacy, advertising generally, consumer protection, content regulation, intellectual property, defamation, child protection, advertising to and collecting information from children, taxation, employment classification and billing. These laws and regulations and the interpretation or application of these laws and regulations could change. In addition, new laws or regulations affecting our business could be enacted. These laws and regulations are frequently costly to comply with and may divert a significant portion of management's attention. If we fail to comply with these applicable laws or regulations, we could be subject to significant liabilities which could adversely affect our business.

There are many federal, state and international laws that may affect our business including measures to regulate consumer privacy, the use of copyrighted material, the collection of certain data, network neutrality, patent litigation, cyber security, child protection, subpoena and warrant processes, employee classification and others.

In addition, most states have enacted legislation governing the breach of data security in which sensitive consumer information is released or accessed. If we fail to comply with these applicable laws or regulations we could be subject to significant liabilities which could adversely affect our business.

Many of our potential partners are subject to industry specific laws and regulations or licensing requirements, including in the following industries: pharmaceuticals, online gaming, alcohol, adult content, tobacco, firearms, insurance, securities brokerage, real estate, sweepstakes, free trial offers, automatic renewal services and legal services. If any of our advertising partners fail to comply with any of these licensing requirements or other applicable laws or regulations, or if such laws and regulations or licensing requirements become more stringent or are otherwise expanded, our business could be adversely affected. Furthermore, these laws may also limit the way we advertise our products and services or cause us to incur compliance costs, which could affect our revenues and could further adversely impact our business.