



December 3, 2010  
Ray Goforth  
DMX Public Relations  
512-380-8524

## **DMX, Inc. Wins Second Ground-Breaking Music Licensing Proceeding**

Austin, TX - December 2, 2010 - Just 5 months after DMX, Inc., a leading provider of commercial music services, won its ground-breaking victory against music performing rights organization BMI, DMX achieved a comparable victory in its rate court proceeding against ASCAP. In her December 1, 2010 decision, federal district judge Denise Cote of the Southern District of New York resolved more than four years of litigation by adopting DMX's fee proposal in its entirety.

In adopting DMX's proposal, Judge Cote's decision provides DMX with an adjustable fee blanket license that affords DMX credit for the performances of music for which DMX has secured the right of public performance directly from ASCAP-member music publishers. Under Judge Cote's decision, DMX will pay ASCAP approximately \$8 million over the term of the license, before any direct license credits. ASCAP's principal proposal called for DMX to pay approximately \$25 million and did not afford DMX any meaningful credit for what the court described as DMX's "robust direct license program." In rejecting ASCAP's proposal as unreasonable, the court described ASCAP's principal proposal as "extraordinarily aggressive" and noted that "[a] global economic decline of historic proportions is not a reliable basis from which to construct an increase in a licensing rate."

Echoing the decision of Judge Stanton in the BMI proceeding, Judge Cote recognized the licenses that DMX has secured directly from music publishers in competitive market transactions as the appropriate bench mark for setting reasonable license fees for ASCAP's adjustable fee blanket license. To date, DMX has signed licenses with more than 850 music publishers and those numbers continue to grow.

According to Christopher Harrison, DMX's General Counsel, "DMX is gratified by the Court's further validation of DMX's direct licensing initiative, which presents an opportunity for the publishers - and the writers they represent - to receive greater royalties through DMX's increased use of their musical compositions. With Judge Cote's decision, DMX's direct license is now an even more attractive alternative to music publishers looking to increase their revenues."

R. Bruce Rich, senior partner and head of Weil, Gotshal & Manges' IP & Media practice, who represents DMX, describes Judge Cote's decision as "another important example of the positive role that the courts supervising ASCAP's and BMI's licensing activities can play in reining in the inherent market power that is enjoyed by both organizations. DMX's ability to present the Court with real-world evidence of license fees set by the forces of competition

took the guesswork out of the "reasonable fee" estimation process - and demonstrated the enormous gap that existed between those competition-set fee levels and the noncompetitive fees that ASCAP was seeking through the court process."

- 30 -

#### **About DMX**

Recognized as an international leader of experiential marketing services, DMX creates cohesive brand experiences across physical and digital environments. From mobile-enhanced in-store activation, to branded digital music microstores, from branded streaming music players embeddable across social networking sites, to turnkey music promotions, DMX's interactive strategies leverage a brand's physical and digital properties to create unique customer experiences. DMX's in-store services include music, video/digital signage, and scent marketing. For more information please visit DMX at [www.dmx.com](http://www.dmx.com) or download the DMX iPhone app. at iTunes.

“###”