NEW MEXICO SOFTWARE, INC
Form 10KSB/A
March 24, 2006

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-KSB /A

ANNUAL REPORT UNDER SECTION 13 OR 15(D) OF THE

SECURITIES EXCHANGE ACT OF 1934

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES**

EXCHANGE ACT OF 1934

FOR FISCAL YEAR ENDED

DECEMBER 31, 2004

COMMISSION FILE #333-30176

NMXS.COM, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE

(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)

91-1287406

(IRS EMPLOYER IDENTIFICATION NUMBER)

5021 Indian School Road, Suite 100

Albuquerque, New Mexico 87110

(505) 255-1999

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)(ZIP CODE)

(505) 255-1999

(REGISTRANT S TELEPHONE NO., INCLUDING AREA CODE)

NONE

(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR,

IF CHANGED SINCE LAST REPORT)

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT: COMMON STOCK, $0.001

PAR VALUE

INDICATE BY CHECK MARK WHETHER THE REGISTRANT (1) HAS FILED ALL REPORTS REQUIRED TO BE FILED BY SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 DURING THE PRECEDING 12 MONTHS (OR FOR SUCH SHORTER PERIOD THAT THE REGISTRANT WAS REQUIRED TO FILE SUCH REPORTS), AND (2) HAS BEEN SUBJECT TO SUCH FILING REQUIREMENTS FOR THE PAST 90 DAYS.

YES x NO o

CHECK IF THERE IS NO DISCLOSURE OF DELINQUENT FILERS IN RESPONSE TO ITEM 405 OF REGULATION S-B NOT CONTAINED IN THIS FORM, AND NO DISCLOSURE WILL BE CONTAINED, TO THE BEST OF THE REGISTRANT S KNOWLEDGE, IN DEFINITIVE PROXY OR INFORMATION STATEMENTS INCORPORATED BY REFERENCE IN PART III OF THIS FORM 10-KSB OR ANY AMENDMENT TO THIS FORM 10-KSB. o

REVENUES FOR YEAR ENDED DECEMBER 31, 2004: $1,018,000

AGGREGATE MARKET VALUE OF THE VOTING COMMON STOCK HELD BY NON-AFFILIATES OF THE REGISTRANT AS OF APRIL 11, 2005, WAS: $ 7,903,283

NUMBER OF SHARES OF THE REGISTRANT S COMMON STOCK OUTSTANDING AS OF APRIL 11, 2005 IS: 36,431,194

TRANSFER AGENT AS OF APRIL 11, 2005: Interwest Transfer Company, Inc., 1981 East 4800 South, Suite 100, Salt Lake City, Utah 84117

PART I

ITEM 1. DESCRIPTION OF BUSINESS

BUSINESS - OUR COMPANY

Our History and Background

New Mexico Software, Inc., was originally incorporated under the laws of the state of New Mexico in April 1996. The privately held company was involved in a reverse merger with Raddatz Exploration, Inc. on August 3, 1999, and the corporate name was changed to NMXS.com, Inc., with New Mexico Software, Inc. becoming a wholly-owned subsidiary. NMXS.com, Inc. went public at that time. NMXS is quoted on the OTC Bulletin Board under the symbol NMXS and on the Berlin Stock Exchange with the symbol NM9. In 2004 we filed an alternate name registration in the state of Delaware to use the name New Mexico Software.

Through our wholly-owned subsidiaries, New Mexico Software, Inc. and Working Knowledge, Inc. (which we acquired in April 2000), we develop and market a range of proprietary Internet-based software products for information lifecycle management, as well as providing web services and web database management. Our software can assist the customer in the management of digital documents, high-resolution graphic images, video clips, and audio recordings. Through New Mexico Software we develop and market the software, and through Working Knowledge we provide related professional services.

Working Knowledge

In April 2000, we acquired Working Knowledge, Inc., a Kansas corporation. Working Knowledge became our wholly-owned subsidiary which provides services that are necessary to prepare, enter, and maintain the customer s data in our software. These services include web design, database development, image scanning, file uploading and technical support. As well, Working Knowledge is able to serve the customer by utilizing the stored images to produce compact disks, digital prints, and large poster formats. These complementary services allow us to complete our business model of offering comprehensive digital management.

Our Products

New Mexico Software develops and markets sophisticated Internet-based document and image management systems for a wide variety of applications. Our products range from pre-packaged desktop software products to complex enterprise systems.

Our products organize, search, retrieve, display, archive and distribute digital content from a central repository. Further, they convert analog and digital files to all digital. They use the popular Linux-based operating system. Our software can handle photographs and images, email, electronic files, paper documents, x-rays and other high-definition media. Our products include web servers, databases, firewalls and search engines, as well as advanced technology such as biometric security devices, optical character recognition, speech recognition to text translation, and personal video recorders.

At the enterprise level, we have two products currently available and several products under development. The first available product is Roswell, our core product. It is used for information lifecycle management systems demanding database integration, web services, file systems, Internet security, high-definition viewing environments, and advanced search engines. We market Roswell in two ways: as a hosted application on the Internet, and as a highly customized application according to clients specifications. A hosted application provides a customer with access to the Roswell product over the Internet. Customers log on to a dedicated server run at our Albuquerque data center and use Roswell to manage, view and distribute their media assets. The customers media files are also stored on our server. Customers using our hosted model are billed on a monthly basis according to the number of registered users and the amount of disk space their media files will occupy. This is the primary basis for our recurring revenue.

Our second enterprise-level product is called XR-EXpress. It is a secure, web-based software that allows medical providers to store, organize and access patient medical diagnostic images such as x-rays, EKG s, MRI s, CT s, and ultrasounds, as well as to diagnose and interpret cases and generate medical reports in conjunction with those images. It incorporates biometric devices, speech recognition to text translation, multiple security levels, comparative image viewing, and a customizable workflow model to provide a streamlined process for medical providers.

SOX Advisors is our new division. The purpose of this division is to provide much needed technical and accounting consulting and to assist CEOs and CFOs in reducing the cost of compliance with Sarbanes-Oxley regulations by offering a total package including the use of subject matter experts (SMEs) deployed to companies requiring the service.

SOXtrac is a software service currently being developed that will enable companies to organize their compliance materials digitally and help them in the control and auditing process within the IT infrastructure and security required by the Sarbanes-Oxley regulations. Many companies are finding it difficult and expensive to initiate and maintain the internal control process required by the new regulations, and we believe our service can have a positive effect. We expect SOXtrac to be available in mid-2005.

Together our SOX Advisors and SOXtrac will minimize the impact of the Sarbanes-Oxley Act on businesses and their managers who have a strong desire to be fully compliant with the Sarbanes-Oxley Act. SOX Advisors will enable CEOs and CFOs to monitor their legal compliance requirements in accordance with Section 302 of the Act, while also enabling financial auditors to identify and clarify the effectiveness of a company s system of internal accounting controls in accordance with Section 404 of the Act.

Digital Filing Cabinet is a mid-level server that can be located at a customer s facilities to provide a similar functionality as our Roswell custom products. However, more companies are choosing to use our DFC to be maintained in our data center instead of purchasing and maintaining the products at their location.

Last fall we launched three new desktop products. The three products, Santa Fe, White Sands, and Taos, further extend our document and image management capabilities, as well as the potential for market penetration. The three new products are prepackaged software ranging in price from $39.95 to $249.95.

Santa Fe is a desktop Linux operating system. Its design emphasizes ease-of-use and a familiar appearance, allowing New Mexico Software to target a large customer base of non-technical users. At the same time, it provides advanced features such as automatic hardware and software configuration as well as superior security. The software is pre-installed with over 60 Linux applications, including photo editing, finance management, desktop publishing, video teleconferencing, games, and a full office suite.

White Sands is an inexpensive but powerful document management system for the small office. It can import electronic files into the database or scan paper documents into the computer and turn them into portable data files (PDF s). White Sands includes a search engine and metadata tagging system, providing the ability to quickly and easily organize, archive and locate the documents. It incorporates optical character recognition technology which allows the customer to search on any word or phrase in the document.

Taos is a next-generation digital photo application. It provides a low-cost image database solution for organizing, cataloging, and searching for images based on their color or shape. The Taos software takes advantage of bleeding-edge performance and graphic processors to provide enhanced photo editing, and it allows images to be tagged with hot words and exported to popular database and image formats.

Our newest consumer product is the Trinity Mothership. It is a media management center combining our Santa Fe Linux software, high-end nVidia hardware and AMD 64-bit gaming and cinematic processors. As a personal video recorder, it provides the ability to record and playback high-definition media, complete with time shifting, commercial skips, and advanced scheduling. It also offers additional features such as a DVD player and recorder, MP3 music player, video games, photo management, and web browser. Each Trinity Mothership product will be custom built by New Mexico Software, allowing a combination of hardware possibilities and upgrades.

Our Technology

We engineer database products around a central core of unique Internet technology that makes it possible to rapidly view, distribute and manage a variety of media files such as documents, graphic images, animation sequences, film clips, audio files, x-rays and high-definition media streams. The value of our core technology, which is found in our Roswell product, is that it provides maximum flexibility in the presentation of digital images to the customer, and integrates general browsing capabilities with specific search capabilities in one product.

Our technology is based on Open Source. Open Source is source code from independent programmers who build applications and release their source code in the public interest. By integrating Open Source programs into our technology, we are able to reduce development time and costs, thereby providing well-built, low-cost products for the digital management market. In

addition, the code that we deliver to customers is compiled. When you compile software code it makes it difficult to use the code to create a similar program, even though the code we create originates from Open Source. This provides better protection and security of our products.

Another technological advantage our company has is the ability to provide totally integrated services that a customer would normally need to outsource to several different suppliers. For example, with our business model and technology, we are able to provide the software itself, plus custom programming, hosting, and database administration as a total solution.

In addition, our core technology is characterized by the following features that contribute to what we perceive to be marketplace advantages:

Ability to use high-resolution graphics files -- large files with lots of detail as opposed to the low resolution files with indistinct detail used by conventional Internet programs.

Ability to use a single image in multiple resolutions, and to magnify the details in the high-resolution images.

Ability to track images with special codes assigned to each image.

Allows rapid transmission of a portion of the image based on user input, significantly enhancing the responsiveness of the system to deliver images over the Internet.

Our technology works on current versions of Internet browsers on Macintosh, PC and UNIX computers.

The enterprise level system is easy to use because it does not require any new software programs, only a familiarity with Netscape or Internet Explorer browsers.

These unique features make our core technology adaptable to and highly desirable in a wide variety of commercial applications. Basically, any company in any industry that manages digital assets and makes use of browser and search engine technology can benefit from our products.

In general, our programmers and engineers are tasked with adding new features to our products and fixing any problems users might encounter. There are risks inherent in software development including unanticipated delays, technical problems that could mean significant deviation from original product specifications, and hardware problems. In addition, once improvements and bug fixes are deployed there is no assurance that they will work as anticipated or that they will be durable in actual use by customers.

We are continuing to develop our core products using a mix of readily available Open Source software development tools. Knowledgeable competitors may be able to deduce how we have assembled our code base and be able to develop competing products. The principal advantage in utilizing Open Source tools is the extremely high degree of portability they ensure. Migrating our products from one operating system or hardware base to another is more easily accomplished by

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avoiding proprietary development tools. The risk factor inherent in the use of such freely available tools is the fact that a sophisticated competitor might be able to imitate our work and produce similar functionality. Any such imitation, should it occur, could have material adverse effects on our business, operations, and financial condition.

Business Strategy

The digital lifecycle management market is one of the newest in the rapidly growing information services industry. Competition at this time is broad, with many vendors offering systems that have some comparable features as our current product. However, to our knowledge, few competitors have all of our comparable features for the complete management and distribution of images.

One competitive strategy we are using is offering our enterprise-level products as hosted applications. By hosting our applications, we are able to provide the customer with a customized product that is maintained by us, which eliminates the customer s need for an information technology staff. We provide the hardware, connectivity, maintenance, technical support, and automatic backups of the customer s data. In addition, now that our core product has been completed, our cycle time (the time required to get a new customer up and running) is greatly reduced. We are often able to accommodate new customers, even those with complex databases, in a matter of weeks. We believe that our strategy to provide hosted applications, coupled with our custom system design capabilities provide us with a diversity of competitive market penetration opportunities.

We believe that establishing and maintaining brand identity of our products and services is critical to attracting new customers and retaining our customer base of large corporations. The importance of brand recognition will continue to increase as new competitors enter the digital lifecycle management marketplace. Promotion and enhancement of our brands will depend largely on our success in continuing to provide high quality service and developing leading-edge products, and this cannot be assured. If businesses do not associate our product names or brands with high quality, or if we introduce new products or services that are not favorably received, we will run the risk of compromising our product line and decreasing the attractiveness of our products to potential new customers. In addition, to attract and maintain customers and to promote our products in response to competitive pressures, we may find it necessary to increase our financial commitment substantially to create and maintain product loyalty among our customers. If we are unable to provide high quality services, or otherwise fail to promote and maintain our products, or if we incur excessive expenses in an attempt to improve our services, or promote and maintain our products, our business, results of operations, and financial condition could be adversely affected.

Our current business strategy is to form up to twenty joint venture projects over the next two to three years. These joint venture projects would be formed to develop, market and distribute various digital lifecycle management applications built around our core Roswell technology. Now that our core technology has been completed, the joint venture format allows us to create distinct product lines using this technology, and to exploit unique marketing opportunities arising from the new product differentiation. The risks and costs of new product development and distribution would be shared among the joint venture partners, as would the resulting revenues, thus benefiting all partners. Sharing costs allows us to reduce our initial capital requirements, and the joint venture structure allows us to bring new products to market very quickly.

Other, better-financed companies may be developing similar products that could compete with our products. Such competition could materially adversely affect our financial condition. Although we have been established for nine years, our initial product was not marketed until 1998. There may exist better-capitalized companies on a parallel development path with similar products addressing our target markets. While the Internet technology marketplace is extremely competitive, we have anticipated a first-to-market advantage with our products. However, other highly capitalized companies that have recognized the absence of digital image management products could overwhelm our first-to-market advantage with expensive and expansive media blitzes that create the perception of a dominant market presence and/or superior products. If we are unsuccessful in addressing these risks and uncertainties, our business, results of operations, and financial condition will be materially and adversely affected.

Marketing and Customers

Our marketing focus to date has been in three principal fields. Approximately 70% of our clients have been in the entertainment industry, approximately 10% have been in the medical field, and approximately 10% have been government agencies. In the fourth quarter 2004, we began marketing our desktop software products to a wide retail market, which, along with several customers in various other industries, encompasses the other 10%. In 2005 we will focus on finding new applications and markets for our core technologies via the joint venture strategy mentioned described above.

Although we were still dependent upon a small number of clients in the year ended December 31, 2004, that trend has been changing, and we believe it will continue to change. During the year ended December 31, 2004, five clients accounted for 55% of our revenues, as compared to the year ended December 31, 2003, when seven clients accounted for 85% of our revenues. As we retain current clients and gain new clients, this reliance on a small number of customers will continue to decrease. In addition, while our enterprise-level products will continue to depend on a relatively small number of customers, we expect an expanded customer base for our Trinity Mothership, XR-Express and SOX Advisors, and a wide retail base for our desktop products. Overall, we anticipate that our customer base will continue to broaden in the next year with the marketing of our medical and consulting practice, giving more stability and predictability to our revenues.

Our Intellectual Properties

We have several proprietary aspects to our software that we believe make our products unique and desirable in the marketplace. Consequently, we regard protection of the proprietary elements of our products to be of paramount importance and we attempt to protect them by relying on trademark, service mark, trade dress, copyright and trade secret laws, and restrictions on disclosure and transferring of title. In addition, as stated above in the technology section, the compiled software code that we offer makes it difficult to use the source code to create other similar programs, even though the code used originates from Open Source. Because we maintain our enterprise software code on dedicated servers in our Albuquerque data center, it provides better protection and security of our products.

We have entered into confidentiality and non-disclosure agreements with our employees and contractors in order to limit access to, and disclosure of, our proprietary information. There can be no assurance that these contractual arrangements or the other steps taken by us to protect our intellectual property will prove sufficient to prevent misappropriation of our technology or to deter independent third-party development of similar technologies.

Although we do not believe that we infringe the proprietary rights of third parties, there can be no assurance that third parties will not claim infringement by us with respect to past, current, or future technologies. We expect that participants in our markets will be increasingly subject to infringement claims as the number of services and competitors in our industry grows. Any such claim, whether meritorious or not, could be time-consuming, result in costly litigation, cause service upgrade delays, or require us to enter into royalty or licensing agreements. Such royalty or licensing agreements may not be available on terms acceptable to us or at all. As a result, any such claim could have a material adverse effect upon our business, results of operations, and financial condition.

While we have commenced the process to protect our trade names, we have not completed the process. Thus, others could attempt to use trade names that we have selected. Such misappropriation of our brand identity could cause significant confusion in the highly competitive Internet technology marketplace and legal defense against such misappropriation could prove costly and time-consuming. As part of the brand identity creation process that defines our products to be unique in the Internet technology marketplace and proprietary in nature, we have begun the process to protect certain product names and slogans as registered trademarks to designate exclusivity and ownership.

Although trademarked in the U.S., effective trademark, copyright or trade secret protection may not be available in every country in which our products may eventually be distributed. There can also be no assurance that the steps taken by us to protect our rights to use these trademarked names and slogans and any future trademarked names or slogans will be adequate, or that third parties will not infringe or misappropriate our copyrights, trademarks, service marks, and similar proprietary rights.

Copyrights and Trademarks

We have four copyright registrations, one of which was effective June 18, 2001, and three federal trademark applications which were filed in January 2000. The copyright is for our MagZoom product. Three additional trademarks were granted in 2002 and they are: for the names AssetWare, Real Time Real Organized Real Simple, and The Look and Feel of e-Commerce.

Government Regulation

Our operations, products, and services are all subject to regulations set forth by various federal, state and local regulatory agencies. We take measures to ensure our compliance with all such regulations as promulgated by these agencies from time to time. The Federal Communications Commission sets certain standards and regulations regarding communications and related equipment.

There are currently few laws and regulations directly applicable to the Internet. It is possible that a number of laws and regulations may be adopted with respect to the Internet covering issues such as user privacy, pricing, content, copyrights, distribution, antitrust and characteristics and quality of products and services. The growth of the market for online commerce may prompt calls for more stringent consumer protection laws that may impose additional burdens on companies conducting business online. Tax authorities in a number of states are currently reviewing the appropriate tax treatment of companies engaged in online commerce, and new state tax regulations may subject us to additional state sales and income taxes.

Because our services are accessible worldwide, other jurisdictions may claim that we are required to qualify to do business as a foreign corporation in a particular state or foreign country. Our failure to qualify as a foreign corporation in a jurisdiction where we are required to do so could subject us to taxes and penalties for the failure to qualify and could result in our inability to enforce contracts in such jurisdictions. Any such new legislation or regulation, or the application of laws or regulations from jurisdictions whose laws do not currently apply to our business, could have a material adverse effect on our business, results of operations, and financial condition.

Employees

As of April 11, 2005, we had 13 employees, including 9 in systems engineering and quality assurance; 3 in administration and sales; and 1 in scanning and site development. We offer and share in the cost of health and dental insurance. A stock option plan and a stock issuance plan for employees and others were adopted on August 3, 1999, and July 27, 2001, respectively. The competition for qualified personnel in our industry and geographic location is intense, and there can be no assurance that we will be successful in attracting, integrating, retaining and motivating a sufficient number of qualified personnel to conduct our business in the future. We have never had a work stoppage, and no employees are represented under collective bargaining agreements. We consider our relations with our employees to be good. From time to time, we also utilize services of independent contractors for specific projects or to support our research and development effort. Our firm also hires independent sales agents who work on commission, and these agents are paid a percentage of the sale once the transaction has been completed.

ITEM 2. DESCRIPTION OF PROPERTY

We currently lease a 3,000 square foot facility in Albuquerque, New Mexico, at a cost of approximately $4,000 per month. The lease expires on April 30, 2009. The facility provides both administration and engineering offices. It is in close proximity to the location of the servers, and the two locations are networked together by fiber optics. The new space provides adequate room for expansion. In addition, we will have access to a large power generator, which will enable our

servers to continue operating during power outages. It also contains an advanced telephone system which will provide the capability needed to provide adequate customer telephone support.

In March 2005, we leased approximately 400 square feet of office space in Santa Monica, California, to house the Working Knowledge, Inc. operations. Current monthly lease payments are $1,400. The lease expires on February 28, 2006.

ITEM 3. LEGAL PROCEEDINGS

Grossman Lawsuit: Kurt Paul Grossman and Ann Grossman filed a complaint for Breach of Contract on a Promissory Note against us on November 25, 2003, in the Superior Court of California, Orange County Division, case # 03CC14074. There was a question of whether the complaint was properly served and whether the California courts have jurisdiction over us. The Grossmans filed an Application for Writ of Attachment which was denied on January 30. The Grossmans asked for $55,000 ($50,000 on the promissory note plus $5,000 interest); $304.40 in costs; and $24,000 in attorney s fees. The Grossmans, through a separate entity, Doctors Telehealth Network, purchased software from us, and it has not been paid for. We filed a motion to quash the service of summons for lack of personal jurisdiction and to vacate a default judgment against us. The court tentatively ruled in favor of the Grossmans. However, after our oral argument on April 23, 2004, the court withdrew its tentative ruling and ruled in favor of us. Specifically, the court ruled that we do not have sufficient contact with California to warrant the exercise of personal jurisdiction. Based on this ruling, there is no action pending against us at this time.

Internal Revenue Service Payments: In October 2003 we entered into an interim agreement with the Internal Revenue Service concerning the repayment of federal tax deposits which we failed to pay for the six operating quarters ended September 30, 2003. We have agreed to pay $5,000 per month beginning November 1, 2003. During this interim period the IRS has agreed to withhold the filing of a federal tax lien. Consideration of filing a lien in the future will be based upon a determination of how long it may take to pay the taxes. Also, our failure to make timely federal tax deposits will default this interim agreement and necessitate the filing of the lien. Our unpaid tax returns for these quarters are being assessed by the IRS, and we expect to receive an assessment notice for each period upon completion of this assessment. We estimate that these assessments will total approximately $269,000, including penalties and interest.

Manhattan Scientifics Lawsuit: On March 9, 2004, our legal counsel received a letter from an attorney representing Manhattan Scientifics. The letter threatened litigation against us for alleged breach of contract and against Richard Govatski for alleged tortious interference with contract. This is based on the fact that we were alleged to have declined to honor Manhattan Scientifics   request for a cashless exercise of 150,000 of our Common Stock Purchase Warrants (the   Warrants) allegedly issued to Manhattan Scientifics. It is our position that the Warrants, among other things, were issued in a transaction that was not an arms-length transaction and therefore, the Warrants should be cancelled, and that in any event, the alleged cashless exercise was not properly done and itself is a nullity. In May 2004, Manhattan Scientifics filed a suit in Federal Court in New York against us and Mr. Govatski for damages in this matter. The case was dismissed by the Federal Court due to a lack of diversity jurisdiction. On June 25, 2004, we were served with a complaint filed in the Supreme Court of the State New York, County of New York, Index No. 601793/04, asserting the same claims. Manhattan Scientifics seeks damages against us for an alleged breach of contract for failure to allow the cashless exercise, in an amount of $1.5 million, and alleges a tortious interference claim against Mr. Govatski.

We served our Answer to the Complaint on August 16, 2004. Mr. Govatski is seeking dismissal of the claim against him for lack of personal jurisdiction and for failure to state a claim. Mr. Govatski s motion to dismiss has been fully submitted to the court, but has not yet been decided. Along with our Answer, we are asserting Counterclaims against Manhattan Scientifics for monies owed by Manhattan Scientifics and for a declaratory judgment, and against a former Company Director, Marvin Maslow for fraud and breach of fiduciary duty due to his persuading the Company to enter into the Warrant transaction with Manhattan Scientifics, which we contend was done for the benefit of Maslow and Manhattan Scientifics, and not for the benefit of the Company. We believe that due to the fact that Mr. Maslow and a second former Company director (Scott Bach), were also Directors of Manhattan Scientifics at the time of the transactions in dispute, and constituted two of the Company s three Directors at the time, Mr. Maslow and Mr. Bach should have excused themselves from participating in negotiating and voting on the issue of whether to approve the Warrants. Messrs. Maslow and Bach resigned as our Directors in December 2002. It is our position that such financial conflicts include Mr. Maslow s causing the Company to pay for third-party consulting services provided to Manhattan Scientifics, while stating that such services would be provided to, and were needed by, the Company as part of the transaction. It is our position that Mr. Maslow also misrepresented the fairness of the transaction in dispute at the time to us, which we contend was being done for the benefit of Mr. Maslow and Manhattan Scientifics, to the detriment of the Company In our counterclaims, we are seeking, among other relief, a determination that the Warrants should be declared null and void from inception, plus damages against Mr. Maslow. It is further our position that even if the Warrants were properly issued (we contend they were not), the Warrants were never properly exercised by Manhattan Scientifics. Manhattan Scientifics and Mr. Maslow have moved to dismiss certain of our Counterclaims alleged against them. That motion too has been fully submitted to the court, but not yet decided.

Other than listed above, neither our parent company nor any of its subsidiaries, or any of their properties, is a party to any pending legal proceeding. We are not aware of any contemplated proceeding by a governmental authority. Also, we do not believe that any director, officer, or affiliate, any owner of record or beneficially of more than five percent of the outstanding common stock, or security holder, is a party to any proceeding in which he or she is a party adverse to us or has a material interest adverse to us.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of the security holders during the fourth quarter ended December 31, 2004.

PART II

ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Market Information

Our stock is currently quoted on the OTC Bulletin Board under the symbol NMXS. The table below sets forth, for the periods indicated below, our high and low sales prices. These quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission, and may not necessarily represent actual transactions.

	Quarter	High	Low
FISCAL YEAR ENDED DECEMBER 31, 2003	First	$0.19	$0.05
	Second	$0.11	$0.055
	Third	$0.21	$0.06
	Fourth	$0.71	$0.20
FISCAL YEAR ENDED DECEMBER 31, 2004	First	$1.07	$0.41
	Second	$0.78	$0.22
	Third	$0.46	$0.22
	Fourth	$0.28	$0.13
FISCAL YEAR ENDED DECEMBER 31, 2005	First	$0.505	$0.135
	Second (to April 9, 2005)	$0.22	$0.171

Our shares are subject to Rule 15g-9 under the Exchange Act. This rule imposes additional sales practice requirements on broker-dealers that sell low-priced securities designated as penny stocks to persons other than established customers and institutional accredited investors. The SEC s regulations define a penny stock to be any equity security that has a market price less than $5.00 per share or with an exercise price of less than $5.00 per share, subject to certain exceptions. Currently our stock is a penny stock. We cannot assure you that our shares will ever qualify for exemption from these restrictions. For transactions covered by this rule, a broker-dealer must make a special suitability determination for the purchaser and have received the purchaser s written consent to the transaction prior to sale. Consequently, the rule may affect the ability of broker-dealers to sell our shares and may affect the ability of holders to sell their shares in the secondary market.

Shareholders

As of April 11, 2005, there were 350 holders of record of our common shares. Such number of record owners was determined from our shareholders records maintained by our transfer agent and does not include beneficial owners of our common stock held in the name of various security holders, dealers and clearing agencies.

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Dividends

We did not declare any cash dividends on our common stock during the year ended December 31, 2004. We have no plans to pay any dividends to the holders of our common stock in 2005.

ITEM 6. MANAGEMENT S DISCUSSION AND ANALYSIS

OVERVIEW

New Mexico Software develops a variety of products centered around the concept of digital lifecycle management systems. The digital lifecycle is the IT (information technology) strategy that associates database information with both paper and digital files including text, email, images, audio, graphics, video and animation files, and coordinates access to a common repository of these processes and files. The digital lifecycle encompasses creation, approval, sharing, storage, retrieval, usage, capture and archiving of the database information. Our core product, Roswell, is an enterprise-level platform that manages digital files. It manages assets by creating folders, or groups of files, catalog hierarchies, users, user groups, and user permissions. The files are managed by a database that maintains both the membership of the file in a folder(s) and information about the file. Roswell s main user interface is a web browser, which makes it accessible and more intuitive to a greater number of users. It can be used on Windows, Macintosh or Linux operating systems.

In addition to developing the software itself, New Mexico Software also provides services such as web hosting, data storage, custom programming, technical support, database development, image scanning and other support services. Since our core technology is based on internet browsers and the majority of our services are either Internet-based or performed via the Internet, the market conditions surrounding the Internet industry directly impact our business.

One of the most significant issues affecting our type of business is that the Internet as a commercial industry is less than ten years old. Therefore, the entire industry is subject to intense competition and rapidly changing conditions, causing uncertainty and inconsistencies for the individual companies operating within that industry. According to the Standard & Poors Industry Survey Computers: Consumer Services & The Internet dated March 3, 2005, two key factors in analyzing Internet-related companies are that because many Internet-related companies do not generate consistent and substantial earnings, and some have only a small base of revenues, such firms often are valued largely on their prospects for future growth , and that for Internet-related companies qualitative assessments are crucial in helping to determine the competitive position, growth opportunities, and value of an Internet company . According to Standard & Poors, some of the qualitative items investors should look at in addition to financial statement analysis are business models, competitive positioning, management s vision and execution, diversification of revenue streams, capital requirements, ability to recruit and retain skilled software programmers, ability to convert new ideas into saleable offerings quickly, ability to capitalize on the unique benefits offered by the Internet, and the ability to generate new ideas, market new products and foster an entrepreneurial and innovative corporate structure. We believe that these subjects apply to New Mexico Software.

We have spent the last two years positioning our business for future growth. Our focus has been on creating a stable team of software engineers, completing the development of our core product (Roswell), streamlining our expenses and clearing up old obligations on the balance sheet. Although the development of our core technology has taken several years, its adaptability to any industry provides us with numerous opportunities for growth and market penetration as more creative applications are discovered and developed from within our core intellectual property (Roswell). These new applications will have low capital requirements and provide additional revenue diversification.

One of the challenges of operating in this industry is creating a balance between sustaining a consistent vision and business strategy and yet maintaining the flexibility required to adapt to the rapidly changing market conditions. We believe that our product structure allows us to do that. Since our core technology is useful to literally any company that manages digital assets and requires browser and search functions, it is the backbone of our product framework. As such, it provides the consistency and stability aspect of the business strategy. The next generation of our products primarily consists of derivative products, new technological combinations, and enhancements to the core product. These have the advantage of taking less than a year to develop into a marketable product, thus providing the flexibility necessary to be able to respond quickly to new market opportunities.

Some challenges we face in the next year are continuing to develop a sales force and distribution channels in order to market our products, as well as educating potential customers about the benefits of digital lifecycle systems. We have hired two executive managers to focus on marketing XR-EXpress, and we are in the process of hiring a manager to focus on the consumer products division (Santa Fe, White Sands, Taos and Trinity Mothership. We also have made the same commitment for our Sox Advisors products and services. These executive managers are known as SME s (Subject Matter Experts) who have had the experience to understand the broad range of requirements needed to successfully manage complex IT structures, technology, client relationships and products.

Another possible opportunity for our business can be found in the current expansion of the open-source software market. The growth in this market was discussed in a May 10, 2004 article in Business Week Online entitled Software Shift . According to this article, the market for software products using open source programming is expanding beyond the Linux operating system to include software products such as databases, search engines, programming tools and desktop PC software. Since our products have all been developed with open source code, we may be in a position to take advantage of this expansion by identifying opportunities to integrate our software with some of the newly emerging open source products.

We presently realize revenues from four primary sources: (i) software sales, maintenance and hosting; (ii) custom programming services; (iii) license fees; and (iv) scanning and other services. We also occasionally realize revenues from hardware sales when the hardware is sold together with the software, and occasionally from other services. To date, license fees and software sales have been directly related. With each sale of our enterprise-level products, the end user enters into a license agreement for which an initial license fee is paid. The license agreement also provides that in order to continue the license, the licensee must pay an annual software maintenance fee for which the party receives access to product upgrades and bug fixes or product patches. Software maintenance consists primarily of hosting and managing our customers data on our servers, as well as technical support programs for our products. This hosting and licensing structure will continue with both our Roswell and XR-EXpress products; therefore, we anticipate a positive impact on license fees, software maintenance, and custom programming revenues from sales of these products. However, according to an article in Forbes magazine on March 29, 2004 entitled A Hard Landing for Software , software companies are gradually relying less on the software license for revenues and more on professional services such as programming and consulting. Management believes this trend applies to our revenues as well, since only our enterprise-level products will use this licensing structure.

With the marketing of the new prepackaged products, management anticipates that revenues for direct software sales and technical support will increase as those products are sold and the associated technical support programs are purchased. The change in focus to include our newer products reflects management s belief that a broader range of products and customers will provide greater stability in revenues.

Scanning services are performed principally by Working Knowledge at its site in Santa Monica, California. To date, management has anticipated that these services will be reserved in the future primarily for existing customers and customers of our core products, although revenue could be generated from unsolicited customers. Accordingly, in 2004 management has not focused on developing this segment of our business, but we are currently assessing the importance of scanning services as part of an overall focus on client services during the coming year.

Cost of services consists primarily of engineering salaries, engineering supplies, compensation-related expenses, hardware purchases and equipment rental. General and administrative expenses consist primarily of salaries and benefits of personnel responsible for business development and operating activities, and include corporate overhead expenses. Corporate overhead expenses relate to salaries and benefits of personnel responsible for corporate activities, including acquisitions, administrative, and reporting responsibilities. We record these expenses when incurred.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of our financial statements in conformity with accounting principles generally accepted in the United States of America requires our management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. As such, in accordance with the use of accounting principles generally accepted in the United States of America, our actual realized results may differ from management s initial estimates as reported. A summary of our significant accounting policies is detailed in the notes to the financial statements which are an integral component of this filing.

Revenue Recognition

The Company derives revenues from three main activities: the sale of software licenses to end users, software hosting and maintenance contracts, and software licenses that require us to provide significant production, customization or modification to our core software product. The Company also derives revenue from third party hardware and software sales, and from installation, training and consulting services.

Our software recognition policies are in accordance with the American Institute of Certified Public Accountants Statement of Position (SOP) 97-2, *Software Revenue Recognition* as amended.

The Company sells software licenses directly to its end user customers. These sales do not require further commitment from the Company and are recognized upon persuasive evidence of an arrangement as provided by agreements executed by both parties, delivery of the software, and determination that collection of a fixed or determinable fee is probable, in accordance with paragraph 8 of SOP 97-2.

In connection with the sales of software licenses for our enterprise-level products, we sell hosting and maintenance contracts that vary in terms. For these hosting contracts, the customer has possession of the software, which resides on the customer s hardware, and we host the customer s data. These hosting arrangements fall within the scope of SOP 97-2. However, although a fee may be charged at the beginning of the contract for the software license and any customization of the software, the hosting portion of the arrangement is billed and recognized on a monthly basis for the term of the contract. The Company has established vendor-specific objective evidence (VSOE) of fair value per paragraph 10 of SOP 97-2 for the hosting services. The VSOE for the hosting portion of contracts with multiple elements is the price charged for hosting when it is sold separately.

However, in some of our hosting arrangements both the software application and the customer s data reside on our hardware. The customer accesses and uses the software on an as-needed basis over the internet, and the customer does not have the right to take possession of the software. Therefore, according to paragraph 5 of EITF 00-3, these hosting arrangements do not fall within the scope of SOP 97-2. Accordingly, we recognize revenue from these hosting services on a straight-line basis over the life of the respective contracts.

Maintenance contract revenue also is recognized on a straight-line basis over the life of the respective contracts, as this format best approximates the timing of the services rendered per paragraph 57 of SOP 97-2. If a maintenance contract is sold as part of a contract with multiple elements, the amount allocated to the maintenance portion is based on VSOE of fair value, which is the price charged for software maintenance services sold separately.

We follow the guidance in SOP 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts* for custom software development arrangements that require us to provide significant production, customization or modification to our core software. Revenue is generally recognized for such arrangements under the percentage of completion method. Under percentage of completion accounting, both the product license and custom software development revenue are recognized as work progresses based on specific milestones in accordance with paragraphs 85 through 91 of SOP 97-2. We believe that project milestones based on completion of specific tasks provide the best approximation of progress toward the completion of the contract. If custom programming services are sold as part of a contract with multiple elements, a portion of the contract revenue is allocated to the custom programming services based on VSOE of fair value. VSOE for custom programming services is determined based on the price charged for these services when they are sold separately. At December 31, 2003 and December 31, 2004, there were no custom software development arrangements in progress.

The sale of third party hardware and software generally is billed as a separate deliverable under consulting or custom development contracts.

Installation, training and consulting revenue is recognized as the services are rendered. These services are accounted for separately per paragraph 65 of SOP 97-2. They include services that are not essential to the functionality of the software. They are usually billed separately; however, if they are included in a software agreement with multiple elements, a portion of the contract revenue is allocated to these services based on VSOE of fair value. VSOE is determined based on the price charged for these services when they are sold separately.

Amounts collected prior to satisfying the above revenue recognition criteria are included in deferred revenue.

The Company follows the guidance provided by SEC Staff Accounting Bulletin (SAB) No. 101, *Revenue Recognition in Financial Statements* and SAB No. 104 *Revenue Recognition* which provide guidance on the recognition, presentation and disclosure of revenue in financial statements filed with the SEC.

The application of SOP 97-2, as amended, requires judgment, including a determination that collectibility is probable and the fee is fixed and determinable. On occasion, we have approved extended payment arrangements for certain customers. In all cases except one, the extended payment arrangements did not exceed 120 days, therefore we considered collectibility to be probable as per paragraph 8 of SOP 97-2. The revenue for the sale of the software licenses to these customers was recognized upon delivery of the software, in accordance with paragraph 28 of SOP 97-2. In one case, a customer was allowed to pay a second installment at the end of twelve months. Since that software license expired at the end of twelve months, the revenue from the second installment payment was recognized at the time that payment became due, in accordance with paragraph 29 of SOP 97-2.

Income Taxes

Management evaluates the probability of the utilization of the deferred income tax assets. The Company has estimated a $8,754,000 deferred income tax asset at December 31, 2004, related primarily to net operating loss carryforwards at December 31, 2004. Management determined that because the Company has not yet generated taxable income it was not appropriate to recognize a deferred income tax asset related to the net operating loss carryforward. Therefore, the fully deferred income tax asset is offset by an equal valuation allowance. If the Company begins to generate taxable income, Management may determine that some, if not all of the deferred income tax asset may be recognized. Recognition of the asset could increase after tax income in the future. Management is required to make judgments and estimates related to the timing and utilization of net operating loss carryforwards, utilization of other deferred income tax assets, applicable tax rates and feasible tax planning strategies.

Goodwill

Goodwill was recognized in the Company s acquisition of Working Knowledge, Inc. In December 2004, based upon the Company s impairment analysis, the remainder of the goodwill was written off.

Stock Based Compensation

The Company grants stock awards and stock options to employees and non-employees as consideration for services. Management believes that the best indicator of value for stock awards is the trading value of the shares of stock on the date the Company enters into the agreements. For non-employees, that date is generally the date on which the company is committed to such an agreement. At times the Company may grant stock as payment for accrued but unpaid payroll. In these cases, the Company values the shares at the trading price on the date they are granted and reduces the payroll accrual by the same amount. We have elected to apply the intrinsic value method prescribed in APB No. 25 for stock options granted to employees. For options granted to non-employees, we estimate the value of those awards using the Black-Scholes option pricing model.

Contingencies

We are subject to the possibility of various law contingencies arising in the ordinary course of business. We consider the likelihood of loss or impairment of an assets or the incurrence of a liability, as well as our ability to reasonably estimate the amount of the loss contingencies.

At December 31, 2004, the Company is involved in litigation related to a dispute over the validity of the issuance of 150,000 of the Company s common stock warrants. The plaintiff has made a claim of damages of $1,500,000 against the Company. We believe that we have adequate defenses and counter claims and therefore we have not accrued for any potential loss on this case nor are the 150,000 warrants included in the number of our potentially dilutive securities at December 31, 2004.

The Company is paying past due payroll taxes of approximately $269,000 (including estimated penalties and interest) at a rate of $5,000 per month. The Company has accrued its estimate of interest and penalties of $75,000 on this past due amount. However, the Company has received notices from the IRS reflecting interest and penalty amounts greater than $75,000. We believe that the Company will negotiate a final settlement with the IRS of approximately $75,000 for those penalties and interest. However, the final settlement may vary from our estimate.

Software Development Costs

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We account for software development costs in accordance with SFAS No. 86 *Accounting for Costs of Computer Software to be Sold, Leased, or Otherwise Marketed*. Product research and development expenses consist primarily of personnel, outside consulting and related expenses for development, and systems personnel and consultants and are charged to operations as incurred until technological feasibility is established. The Company considers technological feasibility to be established when all planning, designing, coding and testing have been completed to design specifications. After technological feasibility is established, costs are capitalized. Historically, product development has been substantially completed with the establishment of technological feasibility and, accordingly, no costs have been capitalized.

RESULTS OF OPERATIONS

A summary of operating results for the twelve months ended December 31, 2004 and 2003 is as follows:

	2004			**2003**		
	Amount	**% of Revenue**		**Amount**	**% of Revenue**	
Revenues	$1,018,000	100.0	%	$1,300,000	100.0	%
Cost of service	374,000	36.7	%	330,000	25.4	%
Gross profit	644,000	63.3	%	970,000	43.7	%
General & administrative	992,000	97.4	%	1,155,000		