

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-K/A

Annual report pursuant to section 13 and 15(d) [amend]

Filing Date: **2005-05-02** | Period of Report: **2004-12-31**  
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### FILER

#### **DIGITAL VIDEO SYSTEMS INC**

CIK: **1009395** | IRS No.: **770333728** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **10-K/A** | Act: **34** | File No.: **000-28472** | Film No.: **05791645**  
SIC: **3651** Household audio & video equipment

Mailing Address  
430 CAMBRIDGE AVENUE,  
SUITE 110  
PALO ALTO CA 94306

Business Address  
430 CAMBRIDGE AVENUE,  
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PALO ALTO CA 94306  
(650) 322-8108

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 10-K/A**

AMENDMENT NO. 1

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(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the fiscal year ended December 31, 2004

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission file number 0-28472



**DIGITAL VIDEO SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

77-0333728

(I.R.S. Employer Identification Number)

**430 Cambridge Avenue, Suite 110  
Palo Alto, California 94306**

(Address of Principal Executive Offices including Zip Code)

**(650) 322-8108**

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act: None

**Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, par value \$0.0001 per share**

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  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not 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-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes  No

As of June 30, 2004, there were approximately 1,070,218 shares of the registrant's common stock outstanding. The aggregate market value of the common stock held by non-affiliates of the registrant (based on the closing price for the common stock on the Nasdaq SmallCap Market on June 30, 2004) was approximately \$9,148,244. Shares of the registrant's common stock held by each executive officer and director and by each entity that owns 5% or more of the registrant's common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of April 26, 2005, there were approximately 1,244,762 shares of the registrant's Common Stock outstanding.

**EXPLANATORY NOTE**

This Annual Report on Form 10-K/A ("Form 10-K/A") is being filed as Amendment No. 1 to the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 14, 2004 ("Form 10-K") for the purpose of amending Items 10, 11, 12, 13 and 14 of Part III to add the information required therein, since the Company's definitive proxy statement for its 2005 annual meeting of stockholders is now expected to be filed later than May 2, 2005. Other than as set forth below, the items of Form 10-K continue to speak as of the date of the original filing of the Registrant's Form 10-K, and the Registrant is not updating the disclosure in such items.

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**PART III**

**Item 10. Directors and Executive Officers of the Registrant**

**Directors**

The members of our Board of Directors as of April 26, 2004 are as follows:

<u>Name</u>	<u>Age</u>	<u>Current Position</u>	<u>Director Since</u>
Thomas A. Spanier	59	Chairman of the Board and Chief Executive Officer	2004
Douglas T. Watson	52	President, Chief Operations Officer, Acting Chief Financial Officer and Director	1998
John M. Fuller	61	Director	2002
Thomas J. Parilla	40	Director	2004

Unless appointed by the Board of Directors to fill an existing vacancy, all directors are elected at the annual meeting of stockholder to serve for one year terms or until their successors are elected and qualified. There are no family relationships among the directors or executive officers of DVS.

*Thomas A. Spanier*

was elected to the Board in March 2004. On April 14, 2004, he was appointed Chairman of the Board and Chief Executive Officer. From April 2003 to April 2004, Mr. Spanier was the principal of Spanier & Associates, Novato, California, a firm which provides interim management and consulting services. From April 2001 to April 2003, he served as Senior Vice President of Finance and Operations of Cradle Technologies, Mountain View, California, a fabless semiconductor company. From April 2000 to April 2001, he served as President and Chief Operating Officer of Uptime One, Inc., a development stage applications service provider focused on connecting food manufacturing companies and their suppliers. Prior thereto, from April 1998 to April 2000, Mr. Spanier was the Executive Vice President and Chief Operating Officer of the California Culinary Academy, San Francisco, California, which was a public, for-profit culinary school. Mr. Spanier has a B.S. degree in Business from the University of California, Berkeley and an M.B.A. degree from Harvard Business School.

*Douglas T. Watson*

has served as a director since November 1998. Mr. Watson began serving as our President, Chief Operating Officer and Acting Chief Financial Officer in April 2004. He served as our Chief Executive Officer from February 2002 to April 2004. Mr. Watson also served as a member of the Executive Committee from November 1998 to March 2002. Prior to joining DVS, Mr. Watson served as President and Chief Executive Officer of Astoria Metal Corporation, a ship repair and dismantling firm which he founded in 1992.

*John M. Fuller*

has served as a director since May 2002. Since March 1997, Mr. Fuller has been President of Pantechcon Aviation Ltd., a privately-held aircraft leasing company. Prior to becoming President, Mr. Fuller served on the Board of Directors of Pantechcon while employed with TECOP International, an international aerospace market development company. For nearly 20 years prior to becoming President of Pantechcon, Mr. Fuller held various marketing and operations positions in the aerospace industry. Mr. Fuller received an M.B.A. degree from the Harvard Business School and an A.B. degree in Economics from the University of California, Berkeley.

*Thomas J. Parilla*

was elected as a director by the Board in October 2004 to fill a vacancy. Since January 2004, Mr. Parilla has been the President of the Parilla Investment Group in Erie, Pennsylvania. Prior to forming his own investment group, from October 2002 to January 2004, Mr. Parilla served as Senior Financial Consultant and Vice President of PNC Investments, Erie, Pennsylvania. From June 2000 to August 2002, he served as the Regional Manager and Vice President of Investments of First National Investment Services, Northwest, Pennsylvania. Mr. Parilla began his career in finance over a decade ago with Morgan Stanley and serves on several private boards in his community. Mr. Parilla received his B.A. degree in Economics from Mercyhurst College in Erie, Pennsylvania.

We currently have one vacancy on the Board of Directors. That position will be filled by a person who meets the independence requirements of The Nasdaq Stock Market, including the Audit Committee independence standards, and otherwise meets the qualifications set forth by the Nominating Committee. We expect to fill this vacancy at or before our 2005 annual meeting of stockholders.

#### **Audit Committee and Audit Committee Financial Expert**

We have a separately designated a standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The members of the Audit Committee are Messrs. Fuller and Parilla. The Board of Directors has determined that each of the members of the Audit Committee is independent as defined by the listing standards of the Nasdaq SmallCap Market and Section 10A(m)(3) of the Exchange Act. In addition, the Board of Directors has determined that Mr. Fuller is an "audit committee financial expert," as that term is defined in Item 401(h) of Regulation S-K of the Exchange Act.

#### **Code of Ethics**

We have adopted a Code of Business Conduct and Ethics that applies to all our directors, officers (including our principal executive officer, principal financial officer and controller) and employees, as well as the directors, officers and employees of our subsidiaries. The Code of Business Conduct and Ethics can be found on our website at <http://www.dvsystems.com>. We will also post on our website any amendment to the Code of Business Conduct and Ethics, as well as any waivers that are required to be disclosed by the rules of the SEC or the Nasdaq SmallCap Market.

#### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires DVS' executive officers and directors, and persons who own more than 10% of a registered class of DVS' equity securities ("10% Stockholders"), to file reports of ownership on Form 3 and changes in ownership on Form 4 or 5 with the SEC. Such executive officers, directors and 10% Stockholders are also required by SEC rules to furnish DVS with copies of all Section 16(a) forms they file.

Based solely on its review of copies of such forms received, or written representations from certain reporting persons that no filings on Forms 5 were required for such persons, DVS believes that, during 2004, its executive officers, directors and 10% Stockholders complied with all applicable Section 16(a) filing requirements.

#### **Item 11. Executive Compensation**

##### **Summary Compensation Table**

The following table sets forth certain information concerning total compensation received by our Chief Executive Officer and our other most highly compensated executive officer during the last year (the "Named Officers") for services rendered to DVS in all capacities for the three years ended December 31, 2004. No other executive officer received more than \$100,000 in total compensation during the last fiscal year.

<u>Name and Principal Position</u>	<u>Year</u>	<u>Annual</u>	<u>Long-Term</u>
		<u>Compensation(1)</u>	<u>Compensation Awards</u>
		<u>Salary (\$)</u>	<u>Number of Shares Underlying Options</u>
Thomas A. Spanier(2) <i>Chief Executive Officer and Chairman of the Board</i>	2004	\$114,231	23,000(4)
Douglas T. Watson (3)	2004	\$156,250	7,500(5)

Former Chief Executive Officer;  
President and Chief Financial Officer

2003	\$139,231	
2002	\$106,817(6)	17,500(7)

(1) The compensation described in this table does not include medical insurance, retirement benefits and other benefits received by the foregoing executive officers which are available generally to all employees of DVS and certain perquisites and other personal benefits received by the foregoing executive officers of DVS, the value of which did not exceed the lesser of \$50,000 or 10% of the executive officer's cash compensation in the table.

(2) Mr. Spanier was appointed DVS' Chairman of the Board and Chief Executive Officer in April 2004.

(3) Mr. Watson served as DVS' Chief Executive Officer until April 2004, but continued thereafter as our President and Chief Financial Officer.

(4) Includes an option to purchase 3,000 shares of DVS Common Stock at an exercise price of \$15.40 per share and an option to purchase 20,000 shares of DVS Common Stock at an exercise price of \$18.20 per share.

(5) Includes an option to purchase 7,500 of DVS Common Stock at an exercise price of \$15.40 per share.

(6) Includes \$33,900 paid to Mr. Watson for his services as a consultant to DVS from January 2002 until he began serving as DVS' Chief Executive Officer in February 2002.

(7) Includes a warrant to purchase 10,000 shares of DVS common stock at an exercise price of \$13.40 per share and an option to purchase 7,500 shares of DVS common stock at an exercise price of \$13.40 per share.

### Option Grants in Last Year

The following table sets forth, as to the Named Officers, information concerning stock options granted during the year ended December 31, 2004.

<u>Individual Grants</u>					
<u>Name</u>	<u>Number of Shares Underlying Options Granted</u>	<u>% of Total Options Granted to Employees in Year(1)</u>	<u>Exercise Price Per Share</u>	<u>Expiration Date</u>	<u>Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option</u>
					<u>Term(2)</u>
					<u>5%</u> <u>10%</u>

Thomas A. Spanier	3,000	4.65	\$15.40	3/31/14	75,255	119,831
	20,000	31.01	\$18.20	3/1/14	592,918	944,122
Douglas T. Watson	7,500	11.63	\$15.40	3/31/14	188,137	299,577

(1) Percentages are based on a total of 64,500 shares underlying options granted to employees in fiscal 2004.

(2)

The potential realizable value is based on the term of the option at the date of the grant. It is calculated by assuming that the stock price on the date of grant appreciates at the indicated annual rate, compounded annually for the entire term, and that the option is exercised and sold on the last day of the option term for the appreciated stock price. Actual gains, if any, are dependent on the actual future performance of DVS' common stock and the timing of exercise and sale transactions by the holder. These numbers are based on SEC requirements and do not reflect DVS' projection or estimate of future stock price growth.

### Option Exercises and Holdings

The following table sets forth, as to the Named Officers, certain information concerning the number of shares acquired upon exercise of stock options during the last fiscal year and the number of shares subject to both exercisable and unexercisable stock options as of December 31, 2004. Also reported are values for "in-the-money" options that represent the positive spread between the respective exercise prices of outstanding stock options and the fair market value of DVS' common stock as of December 31, 2004.

#### Aggregated Option Exercises in Last Year

#### And Year-End Option Values

<u>Name</u>	<u>Shares Acquired on Exercise(#)</u>	<u>Value Realized(\$)</u>	<u>Number of Shares Underlying Unexercised Options at December 31, 2004</u>		<u>Value of Unexercised In-the-Money Options at Year-End(1)</u>	
			<u>Exercisable</u>	<u>Unexercisable</u>	<u>Exercisable</u>	<u>Unexercisable</u>
Thomas A. Spanier	--	--	6,500	16,500	--	--
Douglas T. Watson	--	--	19,286	--	--	--

(1) Fair market value (last reported sale price) of DVS common stock at the fiscal year end (\$7.20 on December 31, 2004) minus the exercise price.

## Employment Agreements and Other Arrangements

DVS has no employment agreement or other arrangement regarding employment with the Named Officers or any other executive officer of the Company.

## Director Compensation

Between January 2004 and March 2004, non-employee directors were entitled to receive \$1,200 per Board meeting attended. Since April 2004, non-employee Board members will receive \$500 for each Board meeting attended, \$750 for each Audit Committee meeting attended and \$500 for each committee meeting other than the Audit Committee. These Board fees were accrued but not paid in 2004. Non-employee directors are also entitled to participate in DVS' 2002 Director Option Plan and receive grants of options thereunder to purchase shares of DVS common stock as described in the following paragraph. Non-employee directors are also reimbursed for their reasonable out-of-pocket expenses incurred in connection with attending meetings of the Board and committees of which they are members.

Pursuant to the terms of the DVS 2002 Director Option Plan, each non-employee director is automatically granted an option to purchase 3,000 shares of common stock upon appointment or election to the Board of Directors and an option to purchase 1,000 shares of common stock on January 1 of each year thereafter if on such dates he or she is then a non-employee director and has served on our Board of Directors for at least the preceding six months. All options granted under the DVS 2002 Director Option Plan vest at a rate of 25% every six months.

The table below summarizes option grants to our directors during fiscal 2004 as compensation for their services as directors:

<u>Directors</u>	<u>Issue Date</u>	<u>Number of Shares Underlying Options</u>	<u>Exercise Price Per Share</u>	<u>Number of Shares Underlying Options Exercised to Date</u>	<u>Aggregate Purchase Price(1)</u>
John M. Fuller	1/01/04	1,000(2)	\$21.50	--	\$21,500
Thomas J. Parilla	10/22/04	3,000(2)	\$5.55	--	\$16,650
Thomas A. Spanier	3/31/04	3,000	\$15.40	--	\$46,200

(1) Assumes exercise to purchase all shares subject to the option at the applicable exercise price.

(2) Represents an automatic annual option grant pursuant to the terms of DVS' 2002 Director Option Plan. The option vests at a rate of 25% every six months from the issue date. In addition, if the option is not assumed or substituted upon a change of control, the option will become fully vested and exercisable. In such event, the optionee will have 30 days from the date of notice to exercise the option, and upon the expiration of such period the option will terminate.

(3) Represents an automatic initial option grant pursuant to the terms of DVS' 2002 Director Option Plan. The Options vest at a rate of 25% every six months, beginning six months from the date of grant. In addition, if the option is not assumed or substituted upon a change of control, the option will become fully vested and exercisable. In such event, the optionee will have 30 days from the date of notice to exercise the option, and upon the expiration of such period the option will terminate.

## Compensation Committee Interlocks and Insider Participation

DVS' Compensation Committee is currently composed of Mr. Fuller and Mr. Parilla. No interlocking relationship exists between any 2004 member of DVS' Compensation Committee and any member of the Compensation Committee of any other company, nor has any such



interlocking relationship existed in the past. No member of the Compensation Committee is or was formerly an officer or an employee of DVS.

## Item 12. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information concerning the beneficial ownership of DVS common stock as of April 26, 2005 for the following:

1. each person or entity who is known by DVS to own beneficially more than 5% of the outstanding shares of DVS common stock;
2. each of our directors;
3. each of our Named Officers; and
4. all directors and executive officers of DVS as a group.

In general, "beneficial ownership" refers to shares that an individual or entity has the power to vote, or dispose of, and stock options or warrants that are currently exercisable or will become exercisable on or before June 27, 2007. Unless otherwise indicated, each person named below holds sole investment and voting power, other than the powers that may be shared with the person's spouse under applicable law.

<u>Name</u>	<u>Common Stock Beneficially Owned</u>	<u>Percentage Beneficially Owned (1)</u>
<b>5% Stockholders</b>		
Empire Capital Partners		
1 Gorham Island Westport, CT 06880	288,199 (2)	18.81%
Glenbrook Capital Management (3)		
P.O. Box 524 Glenbrook, NV 89413	125,477 (4)	9.77%
Glenbrook Capital, L.P.		
P.O. Box 524 Glenbrook, NV 89413	105,510 (5)	7.81%
<b>Executive Officers and Directors</b>		
Thomas A. Spanier	6,500 (6)	*
John M. Fuller	11,600 (7)	*

Thomas J. Parilla	750 (8)	*
Douglas T. Watson	29,446 (9)	2.31%
All executive officers and directors as a group (4 persons)	48,296 (10)	3.75%

\* Less than one percent of the outstanding common stock.

(footnotes continued on following page)

(1) Based on 1,244,762 shares outstanding as of April 26, 2005.

(2) Based solely on information provided by Empire Capital Partners in its Forms 3 and 4 filed with the Securities and Exchange Commission. Includes (i) 172,132 shares of common stock issuable upon conversion of currently convertible preferred stock; and (ii) 116,067 shares of common stock issuable upon exercise of currently exercisable warrants. Specifically, the shares issuable upon conversion of the Series C convertible preferred stock (the "Converted Preferred Shares") and upon exercise of the warrants (the "Warrant Shares") are held directly by Empire Capital Partners, L.P., a Delaware limited partnership as to 50,108 Converted Preferred Shares and 55,054 Warrant Shares; Empire Capital Partners Ltd., a Cayman Islands exempted company, as to 93,430 Converted Preferred Shares and 46,715 Warrant Shares; Empire Capital Partners II, Ltd., a Cayman Islands exempted company, as to 17,405 Converted Preferred Shares and 8,703 Warrant Shares; Charter Oak Partners, L.P., a Delaware limited partnership as to 9,292 Converted Preferred Shares and 4,646 Warrant Shares; and Charter Oak Partners II, L.P. as to 1,897 Converted Preferred Shares and 949 Warrant Shares. None of the shares of Preferred Stock have been converted, nor have the Warrants been exercised. Empire GP, L.L.C. (the "General Partner" serves as the general partner of, and has investment discretion over the securities held by Empire Capital Partners, L.P. (the "General Partner") Empire Capital Management L.L.C. (the "Investment Manager") serves as investment manager to, and has investment discretion over the securities held by Empire Capital Partners Ltd. and Empire Capital Partners II, Ltd. and certain accounts owned by Charter Oak Partners L.P. and Charter Oak Partners II, L.P. Scott Fine and Peter Richards are the managing members of Empire GP, L.L.C and Empire Capital Management L.L.C.

(3) Glenbrook Capital Management, a Nevada corporation, ("GCM") is the General Partner of Glenbrook Capital, L.P., a Nevada limited partnership ("GBLP"), and as such has investment discretion over the securities held by GBLP. As the sole general partner of GBLP, GCM may be deemed to be the beneficial owner of all of the portfolio securities owned by GBLP. However, GCM disclaims beneficial ownership of all of the securities owned by GBLP, except to the extent of its pecuniary interest in the limited partnership.

(4) Includes (i) 19,968 shares issuable upon exercise of currently exercisable warrants, including 4,968 warrants that are exercisable for units of common stock and warrants. Also includes all of the securities owned directly by Glenbrook Capital, L.P. See Footnote (3).

(5) Includes 57,484 shares of common stock issuable upon conversion of currently convertible preferred stock and 48,028 shares of common stock issuable upon exercise of outstanding warrants that are exercisable within 60 days of April 26, 2005.

(6) Includes 6,500 shares of common stock issuable upon exercise of outstanding options that are exercisable within 60 days of April 26, 2005.

(7) Includes 7,500 shares of common stock issuable upon exercise of outstanding options and warrants that are exercisable within 60 days of April 26, 2005.

(8) Includes 750 shares of common stock issuable upon exercise of outstanding options that are exercisable within 60 days of April 26, 2005.

(9) Includes 29,286 shares of common stock issuable upon exercise of outstanding options and warrants that are exercisable within 60 days of April 26, 2005.

(10) Includes 44,036 shares of common stock issuable upon exercise of outstanding options and warrants that are exercisable within 60 days of April 26, 2005.

## Equity Compensation Plan Information

The following table summarizes the number of outstanding options and warrants granted to employees and directors, as well as the number of securities remaining available for future issuance, under DVS' equity compensation plans as of December 31, 2004.

<u>Plan category</u>	(a)	(b)	(c)
	<b>Number of securities to be issued upon exercise of outstanding options, warrants and rights</b>	<b>Weighted-average exercise price of outstanding options, warrants and rights</b>	<b>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</b>
Equity compensation plans approved by security holders	147,092	\$19.40	91,032
Equity compensation plans not approved by security holders (1)	85,292	\$13.33	--
Total	232,384	\$17.14	91,032

(1) Includes warrants issued to certain executive officers and directors during fiscal 2003.

## Item 13. Certain Relationships and Related Transactions

Other than as disclosed below, since the beginning of the fiscal year ended December 31, 2004, there has not been any actual or proposed transaction or series of transactions to which DVS, or any of its subsidiaries, was or is a party in which the amount involved exceeded or exceeds \$60,000 and in which any director, executive officer, holder of more than 5% of any class of the DVS common stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest.

DVS Electronics Pvt. Ltd. ("DVSE") a wholly-owned subsidiary of DVS, extended to Xalted Information System, Pvt. Ltd. (Xalted) a line of credit allowing for borrowings of up to approximately \$0.3 million at an interest rate of 8% per annum. A former Co-Chairman of our Company is the Chief Executive Officer of Xalted. Xalted borrowed \$0.2 million in January 2004, which was repaid in March 2004. Xalted has provided various operational services to the Company since DVSE's formation last year, including free rent.

During 2004, a firm affiliated with a director of DVSE received compensation of \$95,000 cash in connection with financings. Additionally, the DVSE director was granted 5,738 non-qualified stock options (post split) valued at 29,000 in connection with services rendered relating to business development for which no expense was recorded.

During 2002, certain DVS Korea employees, officers and board members made significant equity investments into Ellion Digital. During 2003, DVS Korea and the joint venture in China had related party transactions with Ellion Digital. During the year ended December 31, 2003, DVS Korea had total sales of approximately \$3.1 million to Ellion Digital. As of December 31, 2003, DVS Korea had receivables from Ellion Digital of \$0.8 million for product and equipment sales. Further, the China joint venture sold products to Ellion Digital in the amount of \$14.4 million during the year ended December 31, 2003 and had \$2.4 million in accounts receivable from Ellion Digital as of December 31, 2003. During the year ended December 31, 2004, DVS Korea had total sales of approximately \$0.6 million to Ellion Digital. As of December 31, 2004, DVS Korea had receivables from Ellion Digital of \$1.0 million for product and equipment sales. Further, the China joint venture sold products to Ellion Digital in the amount of \$15.5 million during the year ended December 31, 2004 and had \$1.2 million in accounts receivable from Ellion Digital as of December 31, 2004.

#### Item 14. Principal Accountant Fees and Services

The Board of Directors has selected Stonefield Josephson, Inc. as DVS' independent auditors to audit DVS' consolidated financial statements for the year ending December 31, 2005. Stonefield Josephson's first audit for DVS was its audit of our consolidated financial statements for the year ended December 31, 2004.

#### Fee Disclosure

##### Accounting Fees

The following table shows the fees for the audit and other services provided by Stonefield, Josephson and DVS' former auditors, Burr, Pilger & Mayer LLP, (BPM) for 2003 and 2004:

	<u>Year</u>	
	<u>2003</u>	<u>2004</u>
Audit Fees(1)	\$ 271,800	\$ 433,224
Audit-Related Fees(2)	35,000	30,713
Tax Fees(3)	25,000	25,702
All Other Fees	<u>-</u>	<u>-</u>
Total	\$ <u>331,800</u>	\$ <u>489,639</u>

These fees are for professional services performed by Stonefield, Josephson or BPM, as the case may be,  
(1) for the audit of the Company's annual financial statements, review of financial statements included in the Company's quarterly reports on Form 10-Q and for SEC filings for those years.

These fees are for professional services performed by Stonefield, Josephson or BMP, as the case may be,  
(2) for assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements and not reported under "Audit Fees".

- (3) These fees are for professional services performed by Stonefield, Josephson or BPM, as the case may be, with respect to tax compliance, tax advice and tax planning.

## **Policy on Audit Committee Pre-Approval of Audit and Permissible Non-**

### **Audit Services of Independent Auditors**

Beginning May 6, 2003, the Company was required to obtain prior approval from the Audit Committee for all audit and permissible non-audit related fees incurred with the Company's independent auditors. Pursuant to the Pre-Approval Policy, all new projects (and fees) either must be authorized in advance under the guidelines set forth in the Pre-Approval Policy or approved in advance by the full Committee. The Committee does not currently have a separate written Pre-Approval Policy, although the Audit Committee Charter (a copy of which is attached to this proxy statement as Appendix A) addresses the Pre-Approval Policy. All new projects and fees are either pre-approved by the Audit Committee as a whole or by John M. Fuller, the Chairman of the Audit Committee, acting as the designated Audit Committee member for pre-approval purposes. Mr. Fuller reports any such pre-approvals to the Committee at its next meeting.

The Audit Committee has considered whether the provision of non-audit services is compatible with maintaining the independence of Stonefield, Josephson and has concluded that it is.

## **SIGNATURE**

Pursuant to the requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Palo Alto, State of California on this 2nd day of May, 2005.

-  
/s/ Thomas A. Spanier

Thomas A. Spanier  
Chief Executive Officer  
(Principal Executive Officer)

**DIGITAL VIDEO SYSTEMS, INC.**

## **INDEX TO EXHIBITS**

### **Item 15(a)(3)**

**Exhibit**

**Number**

**Description**

- 23.1 Consent of Stonefield Josephson, Inc., independent registered public accounting firm
  - 23.2 Consent of Burr, Pilger & Mayer LLP, independent registered public accounting firm
  - 31.1 Certification of the Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended
  - 31.2 Certification of the Acting Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended
  - 32.1 Certifications of the Chief Executive Officer and the Acting Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
-

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (File Nos. 333-111966, 333-81876, 333-103241 and 333-32225) of Digital Video Systems, Inc. and the incorporation by reference in the Registration Statements on Form S-8 (file Nos. 333-65598, 333-103243, and 333-39211) of Digital Video Systems, Inc. of our report dated April 14, 2005 relating to the December 31, 2004 financial statement schedule included in this Annual Report on Form 10-K, as amended.

/s/ Stonefield Josephson

San Francisco, California

May 2, 2005

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

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/s/ Burr, Pilger & Mayer LLP

Palo Alto, California

May 2, 2005

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## CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER

## PURSUANT TO RULES 13a-14(a) AND 15d-14(a) PROMULGATED

## UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Thomas A. Spanier, certify that:

1. I have reviewed this annual report on Form 10-K of Digital Video Systems, Inc., as amended;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - c) disclosed in this annual report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weakness in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: May 2, 2005

/s/ Thomas A. Spanier

Thomas A. Spanier

Chairman of the Board and

Chief Executive Officer (Principal

Executive Officer)



**CERTIFICATION OF THE ACTING CHIEF FINANCIAL OFFICER**  
**PURSUANT TO RULES 13a-14(a) AND 15d-14(a) PROMULGATED**  
**UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED**

I, Douglas T. Watson , certify that:

1. I have reviewed this annual report on Form 10-K of Digital Video Systems, Inc., as amended;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d- 15(e)) for the registrant and we have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - c) disclosed in this annual report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weakness in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: May 2, 2005

/s/ Douglas T. Watson

Douglas T. Watson

President and Acting Chief Financial Officer

(Principal Accounting and Financial Officer)



CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of Digital Video Systems, Inc. (the "Company") on Form 10-K for the year ended December 31, 2004, as amended by Amendment No. 1 on Form 10-K/A and as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Thomas A. Spanier, Chief Executive Officer of the Company and Douglas T. Watson, Chief Financial Officer of the Company, each, certify, to the best of our knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes- Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
  
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to Digital Video Systems, Inc. and will be retained by Digital Video Systems, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Thomas A. Spanier

Dated: May 2, 2005

Thomas A. Spanier  
Chief Executive Officer  
Digital Video Systems, Inc.

/s/ Douglas T. Watson

Dated: May 2, 2005

Douglas T. Watson  
President and Acting  
Chief Financial Officer  
Digital Video Systems, Inc.

