

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-K/A  
Amendment No. 2

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 For the fiscal year ended  
October 31, 2004

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 (No Fee Required)  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 0-11254

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COPYTELE, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

11-2622630

-----  
(State or Other Jurisdiction of  
Incorporation or Organization)

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(I.R.S. Employer Identification No.)

900 Walt Whitman Road  
Melville, NY 11747  
(631) 549-5900

(Address, Including Zip Code, and Telephone Number, Including Area Code, of  
Registrant's Principal Executive Offices)

Securities registered pursuant to Section 12(b) of the Act:

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Title of Each Class

Name of Each Exchange  
on Which Registered

NONE

NONE

Securities registered pursuant to Section 12(g) of the Act:

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Common Stock, \$.01 par value  
(Title of Class)

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 registrant's knowledge, in definitive proxy or information statement  
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

Aggregate market value of the voting stock (which consists solely of shares of  
Common Stock) held by non-affiliates of the registrant as of April 30, 2004 (the  
last business day of the registrant's most recently completed second fiscal  
quarter), computed by reference to the closing sale price of the registrant's  
Common Stock on the Over-the-Counter Bulletin Board on such date (\$1.08):  
\$87,364,065.

On January 10, 2005, the registrant had outstanding 86,794,198 shares of Common  
Stock, par value \$.01 per share, which is the registrant's only class of common

stock.

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DOCUMENTS INCORPORATED BY REFERENCE:  
NONE

Item 9A.            Controls and Procedures  
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We carried out an evaluation, under the supervision and with the participation of our management, including our Chairman of the Board and Chief Executive Officer and our Chief Financial Officer and Vice President - Finance, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13-15(b) of the Securities Exchange Act of 1934, as amended. Based upon that evaluation, the Chairman of the Board and Chief Executive Officer and the Chief Financial Officer and Vice President - Finance concluded that, in light of the matters described below, our disclosure controls and procedures were not effective as of the end of fiscal 2004.

There was no change in our internal control over financial reporting during the fourth quarter of fiscal 2004 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Subsequent to the end of fiscal 2004, however, in connection with our audit of our financial statements for the fiscal year ended October 31, 2004, we determined that a former accounting employee embezzled funds from us. We immediately conducted an internal investigation and, on December 17, 2004, we filed with the SEC a Current Report on Form 8-K disclosing this determination. In addition to our internal investigation, we discussed the matter with our independent registered public accounting firm, Grant Thornton LLP, and also engaged another independent accounting firm to conduct an independent investigation of this matter. The independent accounting firm undertook to (i) gain an understanding of the facts and circumstances surrounding the known fraudulent activity related to the former employee's embezzlement of funds, (ii) determine if the former employee engaged in fraudulent activities other than what had already been identified by our internal investigation, (iii) identify other employees or third parties, if any, that may have been associated with the known fraudulent activity, (iv) with respect to fiscal 2004 and the first month of fiscal 2005, gain an understanding of our internal controls as they relate to the areas in which the employee was involved (such as cash receipts and disbursements) and the responsibilities assigned to the former employee, test these areas for fraud, identify any weaknesses in our internal controls relating to these areas, make recommendations as to improvements in such internal controls, and quantify potential misstatements to our financial statements, and (v) for fiscal 2001 through fiscal 2003, review areas in which the employee was involved for fraud.

Through our internal investigation and the independent accounting firm's investigation, we have determined the following:

- o Our internal investigation concluded that the former accounting employee was the sole employee participating in the embezzlement. The independent accounting firm agreed with this conclusion.

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- o The independent accounting firm was unable to determine whether any non-employee third party aided or abetted the employee in his fraudulent activity. We have no evidence, however, that any third party aided or abetted him.
- o Our internal investigation determined that, in fiscal 2004 and the first month of fiscal 2005, the former employee wrote checks out to himself using fraudulent authorized signatures, failed to deposit several of his own checks which were paid to us, and concealed such activities through the alteration of bank statements. We determined that the amount embezzled by the employee during these periods was approximately \$189,000. We also discovered approximately \$4,000 in deposits to our account during these periods that we believe were made

by the employee in an effort to conceal his fraudulent activity, for a net loss to us during this period of approximately \$185,000. The independent accounting firm agreed with these conclusions.

- o The independent accounting firm determined that the employee had committed additional fraudulent activity during fiscal 2003, resulting a loss of approximately \$4,500. We subsequently conducted a further internal review of activity by the employee since his hiring in 2001 and determined that the employee had committed additional fraudulent activity in fiscal 2002 and fiscal 2001, resulting in losses during those periods of approximately \$20,000 and \$3,500, respectively. The independent accounting firm agreed with these conclusions.
- o The independent accounting firm concluded that, except for the activity our internal investigation had revealed and the activity between 2001 and 2003 described above, the former employee, in all likelihood did not engage in any other fraudulent activity.
- o Our internal investigation concluded, and the independent accounting firm agreed, that the employee's responsibilities in other areas (accounts receivable, sales, inventory and payroll) was very limited and, therefore, the possibility of fraudulent activity in these areas, by this employee, was remote.

We have terminated the employee and filed a criminal complaint against him, and will seek to recover funds from him. We have recovered approximately \$110,000 of the losses through insurance proceeds. We have applied \$100,000 of such recovery to fiscal 2004, and have recorded a charge to expense of approximately \$75,000 in fiscal 2004, representing the remainder of the fiscal 2004 loss. We have applied \$10,000 of the recovery to the first quarter of fiscal 2005, representing the entire loss identified in such period. The losses in fiscal 2001 through fiscal 2003 were the result of false expenses for which no corresponding asset was received. Accordingly, such amounts were previously expensed in the years such funds were embezzled. We will seek additional recoveries from other parties which, if we are successful in recovering additional amounts, will be recorded as recoveries in future periods when they are received. Based on the amount and nature of the embezzlement and the expected recoveries, we do not believe that the fraudulent activity had a material effect on any of our previously issued financial statements.

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We have incurred a total of approximately \$45,000 of accounting and other professional fees related to this matter through January 14, 2005.

In connection with the audit of the Company's financial statements for the year ended October 31, 2004, Grant Thornton advised us that there was a weakness in our internal control over financial reporting that did not allow us to prevent or detect earlier such fraudulent activities. Specifically, Grant Thornton found that there was a lack of procedures in place to effect an adequate segregation of duties over cash and related cash processing. This weakness caused the following deficiencies:

- o inadequate control of processing of cash receipts,
- o inadequate control over bank transfers,
- o inadequate control over original bank statements and the reconciliation process, and
- o inadequate control over unused checks.

Grant Thornton advised us that these deficiencies constitute a "material weakness" under standards established by the Public Company Accounting Oversight Board.

As a result, and in response also to recommendations made by the independent accounting firm that conducted the investigation, to help ensure against such fraudulent activity in the future, we have implemented changes in certain of our internal controls over financial reporting, as follows:

- o an individual from management, rather than someone in the accounting department, will open the bank statements as they are received from the bank and review them for any unusual checks or other transactions before providing the statements to the accounting department to perform reconciliations;
- o this individual will compare all of the cancelled checks returned with the bank statement with our disbursement records to ensure that the records reflect the information on the check and will review the checks for unusual or unexpected endorsements; and
- o mail will be opened by personnel outside the accounting department and any checks will be immediately restrictively endorsed prior to being given to the accounting department.

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The independent accounting firm also recommended we adopt a "zero-base balance" or a "sweep" account in our operating bank account to enable the bank to transfer funds to the operating account only when checks are presented for payment. We are in the process of implementing this recommendation. We are also in the process of hiring a replacement for the former accounting employee. We have also reviewed the segregation of duties in our accounting department and will further segregate duties once such person is hired, taking into account our staffing size and composition. Finally, the independent accounting firm also recommended that, as our business grows, we consider using a lockbox system for processing cash receipts, under which customers will be requested, via notations on invoices or monthly statements or the use of preaddressed envelopes, to send their payments to a post office box, which will be accessible only by (and will be collected daily by) our bank. We will continue to evaluate the effectiveness of our disclosure controls and procedures and our internal controls over financial reporting on an ongoing basis, and will take further action as appropriate. However, there can be no assurance that our controls and procedures will prevent all errors or fraud.

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PART IV

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Item 15. Exhibits and Financial Statement Schedules

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(a) (1) (2) Financial Statement Schedules

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See accompanying "Index to Financial Statements."

(a) (3) Executive Compensation Plans and Arrangements

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CopyTele, Inc. 1993 Stock Option Plan (filed as Annex A to our Proxy Statement dated June 10, 1993).

Amendment No. 1 to CopyTele, Inc. 1993 Stock Option Plan (filed as Exhibit 4(d) to our Form S-8 dated September 6, 1995).

Amendment No. 2 to CopyTele, Inc. 1993 Stock Option Plan (filed as Exhibit 10.32 to our Quarterly Report on Form 10-Q for the fiscal quarter ended April 30, 1996).

CopyTele, Inc. 2000 Share Incentive Plan (filed as Annex A of our Proxy Statement dated June 12, 2000).

Amendment No. 1 to CopyTele, Inc. 2000 Share Incentive Plan (filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 31, 2001).

Amendment No. 2 to CopyTele, Inc. 2000 Share Incentive Plan (filed as Exhibit 4(e) to our Form S-8 dated September 18, 2002).

CopyTele, Inc. 2003 Share Incentive Plan (filed as Exhibit 4 to our Form S-8 dated May 5, 2003).

Amendment No. 1 to the CopyTele, Inc. 2003 Share Incentive Plan (filed as Exhibit 4(e) to our Form S-8 dated November 9, 2005).

Form of Stock Option Agreement under CopyTele, Inc. 2003 Share Incentive Plan (filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 31, 2004).

Form of Stock Award Agreement under CopyTele, Inc. 2003 Share Incentive Plan (filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 31, 2004).

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(b) Exhibits  
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- 3.1 Certificate of Incorporation, as amended. (Incorporated by reference to Form 10-Q for the fiscal quarter ended July 31, 1992 and to Form 10-Q for the fiscal quarter ended July 31, 1997.)
- 3.2 By-laws, as amended and restated. (Incorporated by reference to Post-Effective Amendment No. 1 to Form S-8 (Registration No. 33-49402) dated December 8, 1993.)
- 3.3 Amendment to By-laws. (Incorporated by reference to Form 10-Q for the fiscal quarter ended January 31, 2003.)
- 10.1 CopyTele, Inc. 1993 Stock Option Plan, adopted on April 28, 1993 and approved by shareholders on July 14, 1993. (Incorporated by reference to Proxy Statement dated June 10, 1993.)
- 10.2 Amendment No. 1 to the CopyTele, Inc. 1993 Stock Option Plan, adopted on May 3, 1995 and approved by shareholders on July 19, 1995. (Incorporated by reference to Form S-8 (Registration No. 33-62381) dated September 6, 1995.)
- 10.3 Amendment No. 2 to the CopyTele, Inc. 1993 Stock Option Plan, adopted on May 10, 1996 and approved by shareholders on July 24, 1996. (Incorporated by reference to Form 10-Q for the fiscal quarter ended April 30, 1996.)
- 10.4 Agreement dated March 3, 1999 between Harris Corporation and CopyTele, Inc. (Incorporated by reference to Form 10-Q for the fiscal quarter ended January 31, 1999.)
- 10.5 Stock Subscription Agreement dated April 27, 1999, including form of Warrant, between CopyTele, Inc. and Lewis H. Titterton. (Incorporated by reference to Form 10-Q for the fiscal quarter ended April 30, 1999.)
- 10.6 Agreement dated July 28, 1999, among CopyTele, Inc., Harris Corporation and RF Communications. (Incorporated by reference to Form 8-K dated July 28, 1999.)

- 10.7 Stock Subscription Agreement dated August 30, 1999, including form of Warrant, between CopyTele, Inc. and Lewis H. Titterton. (Incorporated by reference to Form 10-K for the fiscal year ended October 31, 1999.)
- 10.8 CopyTele, Inc. 2000 Share Incentive Plan. (Incorporated by reference to Annex A of our Proxy Statement dated June 12, 2000.)

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- 10.9 Amendment No. 1 to the CopyTele, Inc. 2000 Share Incentive Plan, adopted on July 6, 2001 and approved by shareholders on August 16, 2001. (Incorporated by reference to Form 10-Q for the fiscal quarter ended July 31, 2001.)
- 10.10 Amendment No. 2 to the CopyTele, Inc. 2000 Share Incentive Plan, adopted on July 16, 2002 and approved by shareholders on September 12, 2002. (Incorporated by reference to Exhibit 4(e) to our Form S-8 (Registration No. 333-99717) dated September 18, 2002.)
- 10.11 Amendment, dated May 10, 2001, to the Joint Cooperation Agreement between CopyTele, Inc. and Volga Svet Ltd. (Incorporated by reference to Exhibit 10.14 to our Form 10-K for the fiscal year ended October 31, 2001.)
- 10.12 Letter Agreement between CopyTele, Inc. and Volga Svet Ltd., dated as of February 1, 2002. (Incorporated by reference to Exhibit 10.15 to our Form 10-K for the fiscal year ended October 31, 2001.)
- 10.13 CopyTele, Inc. 2003 Share Incentive Plan (Incorporated by reference to Exhibit 4 to our Form S-8 dated May 5, 2003).
- 10.14 Amendment No. 1 to the CopyTele, Inc. 2003 Share Incentive Plan (Incorporated by reference to Exhibit 4(e) to our Form S-8 dated November 9, 2005).
- 10.15 Form of Stock Option Agreement under CopyTele, Inc. 2003 Share Incentive Plan (Incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 31, 2004).
- 10.16 Form of Stock Award Agreement under CopyTele, Inc. 2003 Share Incentive Plan (Incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q for the fiscal quarter ended July 31, 2004).
- 10.17 Long Term Agreement dated April 2, 2004 between CopyTele, Inc. and Boeing Satellite Systems International, Inc., as modified September 16, 2004. (Previously filed.)
- 23.1 Consent of Grant Thornton LLP. (Previously filed.)
- 31.1 Certification of Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated April 21, 2005. (Filed herewith.)

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- 31.2 Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated April 21, 2005. (Filed herewith.)

- 32.1 Statement of Chief Executive Officer, pursuant to Section 1350 of Title 18 of the United States Code, dated January 18, 2005. (Previously filed.)
- 31.2 Statement of Chief Financial Officer, pursuant to Section 1350 of Title 18 of the United States Code, dated January 18, 2005. (Previously filed.)

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SIGNATURES  
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Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

COPYTELE, INC.

By: /s/ Denis A. Krusos  
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Denis A. Krusos  
Chairman of the Board and  
Chief Executive Officer

April 22, 2005

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EXHIBIT INDEX  
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- 32.1 Statement of Chief Executive Officer, pursuant to Section 1350 of Title 18 of the United States Code, dated January 18, 2005. (Previously filed.)
- 31.2 Statement of Chief Financial Officer, pursuant to Section 1350 of Title 18 of the United States Code, dated January 18, 2005. (Previously filed.)

CERTIFICATION

I, Denis A. Krusos, Chairman of the Board and Chief Executive Officer of CopyTele, Inc., certify that:

1. I have reviewed this annual report on Form 10-K/A of CopyTele, Inc.;
2. Based on my knowledge, this 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 report;
3. [omitted];
4. The registrant's other certifying officer(s) 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 have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures 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 report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this 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(s) 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 the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses 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 control over financial reporting.

/s/ Denis A. Krusos

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Denis A. Krusos  
Chairman of the Board and  
Chief Executive Officer

April 22, 2005



CERTIFICATION

I, Henry P. Herms, Vice President - Finance and Chief Financial Officer of CopyTele, Inc., certify that:

1. I have reviewed this annual report on Form 10-K/A of CopyTele, Inc.;
2. Based on my knowledge, this 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 report;
3. [omitted];
4. The registrant's other certifying officer(s) 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 have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures 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 report is being prepared;
  - (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) Disclosed in this 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(s) 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 the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses 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 control over financial reporting.

/s/ Henry P. Herms

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Henry P. Herms  
Vice President - Finance and  
Chief Financial Officer

April 22, 2005

