

NEOMEDIA TECHNOLOGIES INC
Form S-3/A
August 15, 2007

As filed with the Securities and Exchange Commission on August 15, 2007
SEC Registration No. 333-137227

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

**AMENDMENT NO. 4 TO
FORM S-3
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**NEOMEDIA TECHNOLOGIES,
INC.**

Delaware
(State or other jurisdiction of
incorporation or organization)

(Name of issuer in its charter)

36-3680347
(I.R.S. Employer
Identification No.)

**2201 Second Street, Suite 600
Fort Myers, Florida 33901
(239) 337-3434**
(Address and telephone number of
Registrant's principal executive
offices)

7373
(Primary Standard Industrial
Classification Code Number)

William J. Hoffman
**2201 Second Street, Suite 600
Fort Myers, Florida 33901-3083
(239) 337-3434**
Telecopier No.: (239) 337-3668
(Name, address, and telephone
number of agent for service)

With copies to:

Clayton E. Parker, Esq. Kirkpatrick & Lockhart Preston Gates Ellis LLP 201 S. Biscayne Blvd., Suite 2000 Miami, FL 33131 Telephone No.: (305) 539-3305 Telecopier No.: (305) 358-7095	Ronald S. Haligman, Esq. Kirkpatrick & Lockhart Preston Gates Ellis LLP 201 S. Biscayne Blvd., Suite 2000 Miami, FL 33131 Telephone No.: (305) 539-3319 Telecopier No.: (305) 358-7095
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Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), other than securities offered only in connection with dividend or interest reinvestment plans, please check the following box.

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount To be Registered(1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(2)
Shares underlying Secured Convertible Debentures, convertible into Common Shares, par value \$0.01 per share	100,000,000	\$ 0.020	\$ 2,000,000.00	\$ 235.40
Common Stock, par value \$0.01 per share	60,438,026	\$ 0.020	\$ 1,208,760.52	\$ 142.27
Shares underlying warrants to purchase Common Stock, par value \$0.01 per share	112,650,000	\$ 0.020	\$ 2,253,000.00	\$ 265.18
TOTALS	273,088,026		\$ 5,461,760.52	\$ 642.85

(1) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c), using the average of the high and low prices of NeoMedia's common stock of \$0.020 per share as reported in the Over-the-Counter Bulletin Board on August 10, 2007

(2) On June 21, 2006, NeoMedia paid the registration fee of \$8,450.96.

THE REGISTRANT HEREBY AMENDS THIS REGISTRAITON STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRAITON STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

Subject to Completion or Amendment
Dated _____, 2007

273,088,026 Shares

NEOMEDIA TECHNOLOGIES, INC.

Up to 100,000,000 Shares Underlying Convertible Debentures
60,438,026 Shares of Common Stock
112,650,000 Shares Underlying Warrants to Purchase Shares of Common Stock

All of the shares of common stock offered in this Prospectus are being offered by the selling security holders in transactions as described in the plan of distribution. The Company will not receive any of the proceeds from the sales (other than exercise prices received upon the exercise of currently outstanding warrants, the underlying shares of which are being registered for sale hereunder).

Our common stock is traded on the Over-the-Counter Bulletin Board under the symbol "NEOM". The last reported sale price of our common stock on the Over-the-Counter Bulletin Board on August 10, 2007 was \$0.02 per share.

This investment in the common stock involves a high degree of risk. Please pay careful attention to all of the information in this Prospectus. In particular, you should carefully consider the discussion in the section entitled "Risk Factors" beginning on page 4 of this registration statement.

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES REGULATOR HAS APPROVED OR DISAPPROVED OF THE SECURITIES TO BE DISTRIBUTED UNDER THIS REGISTRATION STATEMENT OR DETERMINED IF THIS REGISTRATION STATEMENT IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The information in this registration statement is not complete and may be changed. NeoMedia may not distribute these securities until the registration statement filed with the United States Securities and Exchange Commission is declared effective. The registration statement is not and shall not constitute an offer to sell and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

The date of this Prospectus is _____, 2007.

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ABOUT THIS PROSPECTUS

This Prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission (“SEC”) registering for sale up to an aggregate of 273,088,026 shares issued or to be issued for the following purposes:

Shares underlying Convertible Debenture	100,000,000	
Shares underlying warrants to purchase shares of common stock	112,650,000	
Shares of common stock previously issued for the following purposes:		
Stock consideration issued to acquire Gavitec AG	13,660,511	
Stock consideration issued to acquire 12Snap AG	41,543,724	
To retire debt	5,233,791	60,438,026
Total shares being registered hereunder		273,088,026

Convertible Debenture and Warrants - August 2006

On August 24, 2006, we sold to Cornell Capital Partners 10% secured convertible debentures maturing two years from the date of issuance with a face value of \$5,000,000. At any time until August 24, 2008, Cornell Capital Partners has the right to convert the secured convertible debentures, in whole or in part, into NeoMedia common stock at the then effective conversion price, which varies relative to the trading stock price, as follows: \$0.15 per share, or 90% of the lowest closing bid price of the common stock for the 30 trading days immediately preceding the conversion date. The conversions are limited such that the holder cannot exceed 4.99% ownership, unless the holders waive their right to such limitation. The debentures are secured by substantially all of the Company’s assets.

In connection with the secured convertible debentures, we issued to Cornell warrants to purchase shares of our common stock as follows: 50,000,000 warrants with an exercise price of \$0.05 per share, 25,000,000 warrants with an exercise price of \$0.15 per share, 50,000,000 warrants with an exercise price of \$0.20 per share, and 50,000,000 warrants with an exercise price of \$0.25 per share. The exercise prices of all warrants, other than the 50,000,000 warrants with an exercise price of \$0.05 per share, were subsequently repriced to \$0.04 in connection with a convertible debenture financing in December 2006. Up to 100,000,000 shares underlying these warrants are being registered hereunder.

NeoMedia is currently in default of the Investor Registration Rights Agreement entered into on August 24, 2006, as amended by a Master Amendment Agreement entered into on March 27, 2007 in connection with the March 2007 convertible debenture. As a result, Cornell Capital Partners has certain rights with respect to the financing arrangement, specifically, (i) the full face value of each instrument is callable in the aggregate amount of \$5,000,000, (ii) up to 417,000,000 warrants held by Cornell Capital Partners with exercise prices between \$0.04 - \$0.06 can be exercised on a cashless basis, and (iii) NeoMedia is responsible for liquidated damages amounting to 2% of the principal per month, not to exceed \$1,000,000. We paid \$430,000 of accrued liquidated damages on March 27, 2007 relating to this debenture.

Up to 100,000,000 shares underlying this debenture are being registered hereunder.

Acquisition Consideration Shares

During February and March 2006, NeoMedia completed the acquisitions of Gavitec and 12Snap. The aggregate purchase price for Gavitec was \$7,187,000, consisting of \$1,800,000 cash, \$114,000 acquisition-related costs, and \$5,273,000 fair value of 13,660,511 shares issued as consideration. The aggregate purchase price for 12Snap was \$22,036,000, consisting of \$2,500,000 cash, \$114,000 acquisition-related costs, and \$19,422,000 fair value of

49,294,581 shares issued as consideration.

Pursuant to the terms of the sale and purchase agreements with each company, in the event that NeoMedia's stock price at the time the consideration shares issued in connection with each acquisition are saleable was less than the price at which they were valued for purposes of the merger agreement (\$0.389 per share with respect to Gavitec and \$0.3956 per share with respect to 12Snap), NeoMedia was obligated to compensate the sellers in cash for the difference between the price at the time the shares become saleable and the price the shares were valued for purposes of the merger agreement.

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On January 23, 2007, we entered into an agreement with the former shareholders of Gavitec, whereby this purchase price obligation was satisfied through the payment by NeoMedia of \$1,800,000 in cash, and 61,000,000 shares of NeoMedia common stock. We also agreed to pay interest accrued on the purchase price in the amount of \$481,000 and reimburse \$100,000 of costs related to the acquisition to the primary former shareholder of Gavitec. NeoMedia issued the shares and made cash payments of \$2,113,000 during March 2007. 55,204,235 shares related to the acquisitions are being registered hereunder.

On February 22, 2007, the shares issued in connection with the acquisition of 12Snap became eligible for resale under Rule 144. The actual calculated purchase price obligation to NeoMedia based on the volume weighted average closing price of NeoMedia stock for the ten days up to and including February 22, 2007 was \$16,233,000. During March 2007, we issued 197,620,948 shares of our common stock in satisfaction of a portion of the purchase price obligation totaling \$9,427,000. During April 2007, an additional \$1,760,000 of the obligation was retired in connection with the sale of 12Snap. In addition, we have made cash payments against the liability totaling \$362,000. The balance on the purchase price obligation as of June 30, 2007 was \$4,684,000.

On April 4, 2007, we reached an agreement with Bernd Michael, a private investor and former shareholder of 12Snap prior to our acquisition of 12Snap, pursuant to which Bernd Michael acquired from us 90% of the shares of 12Snap, subject to the following material terms and conditions:

- \$1,100,000 was paid in cash at closing, of which \$1,015,000 was applied toward amounts owed to silent partners of 12Snap
 - \$500,000 was placed into an escrow account for 90 days to secure warranty claims;
- The buyer waived his portion of the purchase price guarantee obligation in the amount of \$880,000;
- The buyer returned to NeoMedia 2,525,818 NeoMedia shares previously issued to him;
- 12Snap management waived their portion of the purchase price guarantee obligation in the amount of \$880,000;
- 12Snap management returned to NeoMedia 5,225,039 shares of NeoMedia common stock previously issued to 12Snap management;
- We retained a 10% ownership in 12Snap, subject to an option agreement pursuant to which we have the right to sell, and the buyer has the right to acquire, the remaining 10% stake held by NeoMedia for a purchase price of \$750,000 after December 31, 2007; and
- We will execute a cooperation agreement pursuant to which 12snap will remain NeoMedia preferred partner and enjoy most favored prices, and 12snap will perform certain research and development functions for NeoMedia.

Under this prospectus we are registering 12,650,000 shares of our common stock underlying previously issued warrants issued to Thornhill Capital, LLC, William Fritz, Charles Fritz, and David Kaminer.

Other Information

It is important to note that of the 273,088,026 shares being registered, 200,000,000, or 73%, are being registered on behalf of one shareholder, Cornell Capital Partners.

You should read both this Prospectus and any Prospectus Supplement together with the additional information under the heading "Where You can Find More Information."

You should rely only on the information contained or incorporated by reference in this Prospectus and any Prospectus Supplement. We have not authorized anyone to provide you with different information. We are not making offers to sell or solicitations to buy the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making that offer or solicitation is not qualified to do so or anyone to whom it is unlawful to make an offer or solicitation.

You should not assume that the information contained in this Prospectus, as well as the information we previously filed with the Securities and Exchange Commission that is incorporated by reference herein, is accurate as of any date other than its respective date.

The terms “NeoMedia,” “we,” “our,” and “us” refer to NeoMedia Technologies, Inc. and its subsidiaries unless the context suggests otherwise.

ABOUT NEOMEDIA TECHNOLOGIES, INC.

**NeoMedia Technologies, Inc.
2201 Second Street, Suite 600
Fort Myers, FL 33901
Telephone : (239) 337-3434**

NeoMedia (www.neom.com) is a pioneer in mobile enterprise and marketing technology, bridging the physical and electronic world with innovative direct-to-mobile-Web technology solutions. NeoMedia's flagship qode® service links users to the wireless, electronic world. NeoMedia is headquartered in Fort Myers, Florida, with an office in Aachen, Germany. The qode® suite of easy-to-use, market-driven products and applications is based on a strong foundation of patented technology, comprising the qode® (www.qode.com) platform, qode® reader and qode® window, all of which provide One Click to Content™ connectivity for products, print, packaging and other physical objects to link directly to specific desired content on the mobile Internet.

During the first quarter of 2006, NeoMedia acquired subsidiaries 12Snap AG of Munich, Sponge Ltd. of London, Gavitec AG of Aachen, Germany, Mobot, Inc. of Lexington, Massachusetts, and BSD Software, Inc. of Calgary, Canada. During August 2006, NeoMedia announced that it was selling its Micro Paint Repair business, acquired in February 2004. During the fourth quarter of 2006, NeoMedia divested of its Mobot and Sponge subsidiaries. During January 2007, NeoMedia made the strategic decision with respect to its corporate structure in 2007 and beyond, deciding to shed its remaining non-core 12Snap and NTS business units to focus on the area that management believes will deliver the most value - the core code-reading business. During April 2007, NeoMedia sold the 12Snap business.

As a result of the divestitures of 12Snap, Mobot and Sponge, and the proposed divestitures of NMPR and NeoMedia Telecom Services, beginning in the first quarter of 2007 NeoMedia began evaluating its business as one consolidated business, focusing on its core code-reading business and related intellectual property.

RISK FACTORS

In addition to the other information included in this registration statement, including the matters addressed in "Cautionary Statement Concerning Forward-Looking Statements," you should carefully consider the following risks before deciding whether to buy our common stock. If any of these risks actually occur, our business, financial condition, operating results or cash flows could be materially adversely affected. This could cause the trading price of our common stock to decline and you may lose part or all of your investment.

Risks Related to NeoMedia's Business

NeoMedia Has Historically Lost Money And Losses May Continue

NeoMedia has incurred substantial operating losses since inception, and could continue to incur substantial losses for the foreseeable future. NeoMedia reported net losses of \$14,096,000, \$68,406,000, \$9,147,000 and \$7,230,000 for the six months ended June 30, 2007 (unaudited) and the years ended December 31, 2006, 2005 and 2004, respectively. NeoMedia's accumulated losses were \$175,026,000, \$160,930,000 and \$92,524,000 as of June 30, 2007 (unaudited) and December 31, 2006 and 2005, respectively. As of June 30, 2007 (unaudited) and December 31, 2006 and 2005, NeoMedia had a working capital deficit of \$67,306,000, \$69,048,000 and \$2,065,000, respectively. NeoMedia had stockholders' equity/(deficit) of \$(52,605,000), \$(54,132,000) and \$4,227,000 as of June 30, 2007 (unaudited) and December 31, 2006 and 2005, respectively. NeoMedia generated revenues from continuing operations of \$1,023,000, \$10,309,000, \$877,000, and \$973,000 for the six months ended June 30, 2007 (unaudited), and the years ended December 31, 2006, 2005 and 2004, respectively. In addition, during the six months ended June 30, 2007 (unaudited), and the years ended December 31, 2006, 2005 and 2004, NeoMedia recorded negative cash flows from continuing operations of \$5,264,000, \$9,958,000, \$4,883,000, and \$3,937,000, respectively. To succeed, NeoMedia must develop new client and customer relationships and substantially increase its revenue derived from improved products and additional value-added services. NeoMedia has expended, and to the extent it has available financing, NeoMedia intends to continue to expend, substantial resources to develop and improve its products, increase its value-added services and to market its products and services. These development and marketing expenses must be incurred well in advance of the recognition of revenue. As a result, NeoMedia may not be able to achieve or sustain profitability.

NeoMedia's Independent Registered Public Accounting Firm Have Added Going Concern Language To Their Report On NeoMedia's Consolidated Financial Statements, Which Means That NeoMedia May Not Be Able To Continue Operations

The report of Stonefield Josephson, Inc., NeoMedia's independent registered public accounting firm, with respect to NeoMedia's consolidated financial statements and the related notes for the years ended December 31, 2006, 2005 and 2004, indicates that, at the date of their report, NeoMedia had suffered significant recurring losses from operations and its working capital deficit raised substantial doubt about its ability to continue as a going concern. NeoMedia's consolidated financial statements do not include any adjustments that might result from this uncertainty.

NeoMedia Will Need to Raise Additional Funds to Continue Its Operations

NeoMedia had cash balances in continuing operations of \$151,000 and \$2,813,000 as of June 30, 2007 (unaudited) and December 31, 2006, respectively. NeoMedia could receive additional cash at future dates from the following sources: (i) sale of its non-core business units NeoMedia Micro Paint Repair and NeoMedia Telecom Services, (ii) from the exercise of stock options, to the extent that the exercise price of such stock options is less than the market price of NeoMedia's common stock, and (iii) from the exercise of stock warrants, to the extent that the warrants become registered for resale and the exercise price of such stock warrants is less than the market price of NeoMedia's common stock at the time of exercise, and to the extent that the holder of such warrants does not elect to perform a "cashless" exercise, in which case NeoMedia would not receive any cash proceeds from the exercise. However, none of

these events is contractually obligated. In order to satisfy its obligations that are currently due and that will come due, and maintain its operations in the absence of a material increase in revenues, NeoMedia will need to either generate from the sale of its non-core businesses, or raise additional cash from outside sources. The most likely source of cash in the short term is from the sale of the Micro Paint Repair and/or Telecom Services business unit.

In the event that (i) NeoMedia is unsuccessful in divesting of its remaining non-core business units in a timely fashion, (ii) NeoMedia's stock price does not increase to levels where it can force exercise of enough of its outstanding warrants to generate material operating capital, (iii) the market for NeoMedia's stock will not support the sale of shares underlying such warrants or other funding sources, or (iv) NeoMedia does not realize a material increase in revenue during the next 12 months, NeoMedia will have to seek additional cash sources. There can be no assurances that such funding sources will be available. If necessary funds are not available, NeoMedia's business and operations would be materially adversely affected and in such event, NeoMedia would be forced to attempt to reduce costs and adjust its business plan, and could be forced to sell certain of its assets.

If NeoMedia Fails to Remediate the Material Weaknesses in Its Internal Control over Financial Reporting, NeoMedia May Be Unable to Accurately Report Its Financial Results or Prevent Fraud which Could Result in a Loss of Investor Confidence in NeoMedia's Financial Reports and Have an Adverse Effect on NeoMedia's Business, Operating Results, and Stock Price

Management has assessed the effectiveness of NeoMedia's internal control over financial reporting as of December 31, 2006, using the framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO criteria). Based on its assessment of the design and related testing of NeoMedia's internal controls over financial reporting, management concluded that NeoMedia did not maintain effective internal controls over financial reporting. Based on the COSO criteria, management identified certain control deficiencies that represent material weaknesses. A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The material weaknesses in NeoMedia's controls over financial reporting identified as of December 31, 2006, as well as certain remediation efforts, are more fully disclosed under Item 9A "Controls and Procedures" of NeoMedia's 2006 Form 10-K. As of June 30, 2007, management has remediated three of the control deficiencies identified in NeoMedia's 2006 Form 10-K. Management is currently dedicating staffing and other resources to remediate the remaining control deficiencies.

NeoMedia Has Guaranteed The Value Of Stock Issued In Connection With Recent Mergers Through The Registration Of The Shares, Which Could Result In A Material Cash Liability

Pursuant to the terms of the original purchase agreement, in the event that NeoMedia's stock price at the time the consideration shares are saleable (either upon effectiveness of a registration statement containing the shares, or under Rule 144) was less than \$0.3956, NeoMedia was obligated to compensate 12Snap shareholders in cash for the difference between the price at the time the shares become saleable and \$0.3956. On February 22, 2007, the shares became eligible for resale under Rule 144. The actual calculated purchase price obligation to NeoMedia based on the volume weighted average closing price of NeoMedia stock for the ten days up to and including February 22, 2007 was \$16,233,000. Because the amount of the purchase price guarantee became measurable and highly probable of occurrence beyond a reasonable doubt, as of December 31, 2006, NeoMedia reduced the fair value of the initial stock consideration by the amount of the contingency. During the six months ended June 30, 2007, NeoMedia issued 197,620,948 shares of its common stock in satisfaction of a portion of the purchase price obligation totaling \$9,427,000, made cash payments against the liability totaling \$372,000, accrued interest of \$8,000, and retired an additional \$1,760,000 of the obligation in connection with the sale of 12Snap. The balance on the purchase price obligation as of June 30, 2007 was \$4,684,000. NeoMedia does not currently have sufficient cash resources to meet this obligation.

All Of The Company's Assets Are Pledged To Secure Certain Debt Obligations, Which The Company Could Fail To Repay

Pursuant to secured convertible debentures, dated as of March 27, 2007, August 24, 2006 and December 29, 2006, in the principal amount of \$7,459,000, \$5,000,000 and \$2,500,000, respectively, issued to Cornell Capital Partners, LP, the Company was required to secure such secured convertible debentures' repayment with substantially all of its assets. In the event the Company is unable to repay the secured convertible debentures, it could lose all of its assets and be forced to cease its operations. If the Company is found to be in default under the debentures, the full principal amount of the debentures, together with interest and other amounts owing, may become immediately due and payable. As of June 30, 2007, the Company was in default of a covenant contained in the financing agreements due to the Company's failure to have a registration statement registering certain of the underlying shares of the convertible instruments declared effective by the specified date. NeoMedia is also in default of Series C convertible preferred stock with a face value of \$22,000,000. As a result of the default, the holder of the securities could redeem the convertible debentures and preferred stock for