

1 RICHARD J. IDELL (SBN: 069033)
 ELIZABETH J. REST (SBN: 244756)
 2 IDELL & SEITEL LLP
 3 465 California Street, Suite 300
 San Francisco, CA 94104
 4 Telephone: (415) 986-2400
 Facsimile: (415) 392-9259
 5 Emails: ridell@idellseitel.com; erest@idellseitel.com

6 *Attorneys for Plaintiff U2 HOME ENTERTAINMENT, INC.*

7
 8 TOD L. GAMLEN (SBN: 83458)
 KEITH L. WURSTER (SBN: 198918)
 9 BAKER & McKENZIE LLP
 660 Hansen Way
 10 Palo Alto, CA 94304-1044
 Telephone: (650) 856-2400
 11 Facsimile: (650) 856-9299
 12 Emails: tod.gamlen@bakermckenzie.com;
keith.wurster@bakermckenzie.com

13
 14 *Attorneys for Defendant*
iTALK GLOBAL COMMUNICATIONS, INC.

15
 16 DARRYL M. WOO (SBN: 100513)
 LIWEN A. MAH (SBN: 239033)
 17 FENWICK & WEST LLP
 555 California Street, 12th Floor
 18 San Francisco, California 94104
 Telephone: (415) 875-2300
 19 Facsimile: (415) 281-1350
 20 Emails: dwoo@fenwick.com; lmah@fenwick.com

21 *Attorneys for Defendant*
 22 *HANYA STAR CULTURE & TECHNOLOGY CO., LTD.*

23
 24 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 25 **NORTHERN DIVISION**

26 U2 HOME ENTERTAINMENT, INC., a) Case No.: CV 10-05615 JSW
 27 California Corporation doing business as)
 CENTURY HOME ENTERTAINMENT and) **STIPULATION AND ~~PROPOSED~~ ORDER**
 28 TAI SENG ENTERTAINMENT,) **CONTINUING CASE MANAGEMENT**

1)	CONFERENCE, CASE MANAGEMENT
2	Plaintiff,)	CONFERENCE STATEMENT DEADLINE
3	vs.)	AND INITIAL DISCLOSURE DEADLINE
4	HANYA STAR CULTURE & TECHNOLOGY)	Complaint Filed: December 10, 2010
5	CO., LTD., a foreign corporation doing business)	First Amended Complaint Filed: March 11, 2011
6	in California as HANYA STAR COMPANY,)	Honorable Judge Jeffrey S. White, Presiding
7	INC. and CHARMING CHINA; ITALK)	(E-filing)
8	GLOBAL COMMUNICATIONS, INC., a)	
9	foreign corporation doing business in California)	
10	as ITALKBB and ITALK-BB; and DOES 1)	
11	through 1,000, inclusive,)	
12)	
13	Defendants.)	

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Rule 6-1(b) of the Civil Local Rules of the United States District Court, Northern District of California, Plaintiff U2 HOME ENTERTAINMENT, INC., a California Corporation doing business as CENTURY HOME ENTERTAINMENT and TAI SENG ENTERTAINMENT (“U2” or “Plaintiff”), on the one hand, and Defendants HANYA STAR CULTURE & TECHNOLOGY CO., LTD., a foreign corporation, which Plaintiff contends is doing business in California as HANYA STAR COMPANY, INC. and CHARMING CHINA (“Hanya Star”), and ITALK GLOBAL COMMUNICATIONS, INC., which Plaintiff contends is a foreign corporation doing business in California as ITALKBB and ITALK-BB (“iTalk”) (collectively, Hanya Star and iTalk may be referred to as “Defendants”), on the other hand, without waiver of any objection or defense, hereby agree and stipulate as set forth below.

This Stipulation and Proposed Order are being submitted for the purpose of continuing the Case Management Conference (“CMC”) in this case, which is currently scheduled for April 1, 2011, to May 13, 2011 (or to a date thereafter that is convenient to the Court), as well as other case management deadlines that are tied to the date of the CMC. As set forth in the Recitals below, the parties each believe that good cause exists for the continuation of such CMC in light of the present posture of this case, including a motion filed by Hanya Star under Fed. R. Civ. P. 12(b)(5) for insufficient service of process which is scheduled to be heard on April 22, 2011.

//

RECITALS

WHEREAS, Plaintiff filed its Complaint on December 10, 2010 (“Complaint”); and

WHEREAS, the Honorable Judge Jeffrey S. White entered an order on February 3, 2011 (“CMC Order”) (Doc. No. 13), scheduling the initial Case Management Conference in this matter for April 1, 2011, at 1:30 p.m., in Courtroom 11, 19th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California; and

WHEREAS, the CMC Order requires that the parties file a joint case management statement no later than five (5) court days prior to the conference, or no later than March 25, 2011; and

WHEREAS, on February 14, 2011, iTalk filed a Motion to Dismiss the Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim (“iTalk’s Feb. 14 Rule 12(b)(6) Motion”) (Doc. Nos. 19-22); and

WHEREAS, on February 18, 2011, Hanya Star filed a Motion to Dismiss the Complaint under Fed. R. Civ. P. 12(b)(5) for insufficient service and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim (such motions are referred to as “Hanya Star’s Feb. 18 Rule 12(b)(5)” and/or “Hanya Star’s Feb. 18 Rule 12(b)(6) Motion” as the case may be) (Doc. Nos. 24-26); and

WHEREAS, Hanya Star contends that other than the filing of Hanya Star’s Feb. 18 Rule 12(b)(5) Motion and 12(b)(6) Motion, Hanya Star has not appeared in this action and waives no objection or defense relating to service and jurisdiction; and

WHEREAS, on February 18 and 25, 2011, the Court issued two Orders setting the Briefing Schedule (Doc. Nos. 27 and 29), which scheduled the hearings on both of the Motions to Dismiss for April 22, 2011, at 9:00 a.m.; and

WHEREAS, on March 11, 2011, in response to the Motions to Dismiss filed by Defendants, Plaintiff filed: (1) a First Amended Complaint (“FAC”) (Doc. No. 33); (2) an Opposition to iTalk’s Feb. 14 Rule 12(b)(6) Motion (Doc. No. 32) asking the Court to order such Motion moot in light of the filing of the FAC; (3) an Opposition to Hanya Star’s Feb. 18 Rule 12(b)(5) Motion and Rule 12(b)(6) Motion (Doc. No. 36) opposing Hanya Star’s Feb. 18 Rule 12(b)(5) Motion asserting insufficient service of process, and asking the Court to order Hanya Star’s Feb. 18 Rule 12(b)(6) Motion moot in light of the filing of the FAC; and (4) supporting declarations and proposed orders regarding the aforementioned

1 (Doc. No. 36); and

2 WHEREAS, both Defendants contend that the filing of the FAC does not properly address the
3 issues raised in their respective 12(b)(6) Motions to Dismiss or state valid claims for which relief can be
4 granted. By entering this Stipulation each Defendant is: (i) reserving all of its rights, claims and
5 defenses; (ii) preserving all rights to challenge the FAC; (iii) preserving all rights relating to the
6 sufficiency or propriety of the FAC; and is (iv) not waiving any argument that the FAC fails to state a
7 claim or is otherwise improper or insufficient. Plaintiff contends that the FAC does properly address
8 the issues raised by the Motions to Dismiss and further contends that the FAC does state valid claims
9 for which relief can be granted; and Plaintiff and Defendants are reserving all of their rights, claims and
10 defenses; and,

11 WHEREAS, to address certain issues relating to the filing and effect of the FAC, the parties are
12 entering into a separate stipulation that provides, among other things, that each Defendant will have up
13 to and including April 8, 2011, to respond to the FAC, either by motion, answer or otherwise; and, one
14 or more Defendants shall be filing a motion to dismiss the FAC on or before April 8, 2011; and,

15 WHEREAS, Hanya Star believes that until the Court rules on Hanya Star's Feb. 18 Rule
16 12(b)(5) Motion regarding service, there is an outstanding question regarding whether Hanya Star is
17 properly a party in the case; and

18 WHEREAS, all parties believe that in light of the present posture of this case (including the
19 circumstances referred to above), exchanging Initial Disclosures, filing a joint case management
20 conference statement and having the Case Management Conference prior to the ruling on the Hanya
21 Star's Feb. 18 Rule 12(b)(5) Motion is premature and at a minimum should follow the Court's ruling on
22 the service issue; and, it would be reasonable for such conference to follow the ruling on the planned
23 motions to dismiss the FAC; and,

24 WHEREAS, Rule 6-1(b) of the Civil Local Rules of the United States District Court, Northern
25 District of California, permits the parties to request a modification of fixed deadlines by stipulation in
26 writing; and

27 WHEREAS, in order to at least allow the Court time to rule on Hanya Star's Feb. 18 Rule
28 12(b)(5) Motion regarding service, the parties agree that good cause exists to continue the Case

1 Management Conference to May 13, 2011, or a date thereafter convenient to the Court; and

2 WHEREAS, Plaintiff and Defendants also agree that the last day to file a Rule 26(f) report and
3 joint case management conference statement should be five (5) court days prior to the re-set Case
4 Management Conference; and

5 WHEREAS, Plaintiff and Defendants also agree that the last day to complete their Initial
6 Disclosures pursuant to F.R.C.P. Rule 26 should be five (5) court days prior to the re-set Case
7 Management Conference;

8 **STIPULATION**

9 NOW THEREFORE, Plaintiff and Defendants, by and through their respective undersigned
10 counsel, hereby stipulate as follows:

11 1. Subject to the Court's calendar, the Case Management Conference in this matter shall be
12 continued to ~~May 13, 2011~~, at 1:30 p.m., in Courtroom 11, 19th Floor, Federal Building, 450 Golden
13 Gate Avenue, San Francisco, California, or to a date thereafter convenient to the Court; and

14 2. The last day to file a Rule 26(f) report and joint case management conference statement
15 should be five (5) court days prior to the re-set Case Management Conference; and

16 3. The last day to complete Initial Disclosures pursuant to F.R.C.P. Rule 26 should be five
17 (5) court days prior to the re-set Case Management Conference;

18 SO STIPULATED.

19 IDELL & SEITEL LLP

20 Dated: March 22, 2011

By: Richard J. Idell/

21 Richard J. Idell
22 Attorneys for Plaintiff U2 HOME ENTERTAINMENT,
INC.

23 Dated: March 22, 2011

BAKER & MCKENZIE LLP

24 By: Tod L. Gamlen/

25 Tod L. Gamlen
26 Attorneys for Defendant
iTALK GLOBAL COMMUNICATIONS, INC.

27 //

28 //

1 Dated: March 22, 2011

FENWICK & WEST LLP

2 By: /Liwen A. Mah/

3 Liwen A. Mah

4 Attorneys for Defendant

5 HANYA STAR CULTURE & TECHNOLOGY CO.,
LTD.

6 **ATTESTATION OF CONCURRENCE**

7 I, Richard J. Idell, attest that I am one of the attorneys for Plaintiff U2 HOME
8 ENTERTAINMENT, INC., a California Corporation doing business as CENTURY HOME
9 ENTERTAINMENT and TAI SENG ENTERTAINMENT, and as the ECF user and filer of this
10 document, I attest that, pursuant to General Order No. 45(X)(B), concurrence in the filing of this
11 document has been obtained from Tod L. Gamlen and Darryl M. Woo, the above signatories.
12

13 Dated: March 22, 2011

By: /Richard J. Idell/

14 Richard J. Idell


15 **PROPOSED ORDER**

16 PURSUANT TO STIPULATION, IT IS HEREBY ORDERED that:

- 17 1. The Case Management Conference in this matter shall be continued to July 22,
18 2011, at 1:30 p.m., in Courtroom 11, 19th Floor, Federal Building, 450 Golden Gate Avenue, San
19 Francisco, California; and
- 20 2. The last day to file a Rule 26(f) report and joint case management conference statement
21 shall be five (5) court days prior to the Case Management Conference; and
- 22 3. The last day to complete Initial Disclosures pursuant to F.R.C.P. Rule 26 shall be five
23 (5) court days prior to the re-set Case Management Conference;

24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

25 Dated: March 23, 2011

26 
 Hon. Jeffrey S. White
 Judge of the United States District Court
 Northern District of California