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

26 U2 HOME ENTERTAINMENT, INC., a California) Case No.: CV 10-05615 JSW
 Corporation doing business as CENTURY HOME)
 27 ENTERTAINMENT and TAI SENG) **STIPULATION AND [PROPOSED]**
 28 ENTERTAINMENT,) **ORDER REGARDING: (1) FILING OF**

1) FIRST AMENDED COMPLAINT; AND,
2	Plaintiff,) (2) EXTENDING TIME FOR
3	vs.) DEFENDANTS TO RESPOND TO FIRST
) AMENDED COMPLAINT
4	HANYA STAR CULTURE & TECHNOLOGY) Complaint Filed: December 10, 2010
5	CO., LTD., a foreign corporation doing business in)
6	California, and doing business as HANYA STAR) Honorable Judge Jeffrey S. White, Presiding
7	COMPANY, INC.; ITALK GLOBAL)
8	COMMUNICATIONS, INC., a foreign corporation) (E-filing)
9	doing business in California, and doing business as)
10	ITALKBB; and DOES 1 through 100, inclusive,)
	Defendants.)

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and Rule 6-1(a) 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. (“Hanya Star”) and ITALK GLOBAL COMMUNICATIONS, INC. (“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.

RECITALS

WHEREAS, Plaintiff filed its Complaint on December 10, 2010 (“Complaint”); 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) Motion” and/or “Hanya Star’s Feb. 18 Rule 12(b)(6) Motion” as the case may be) (Doc. Nos. 24-26); and

WHEREAS, on February 18 and 25, 2011, the Court issued two Orders setting the Briefing

1 Schedule (Doc. Nos. 27 and 29), which scheduled the hearings on both of the Motions to Dismiss for
2 April 22, 2011, at 9:00 a.m.; and

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

10 WHEREAS, Hanya Star contends that other than the filing of Hanya Star's Feb. 18 Rule
11 12(b)(5) Motion and 12(b)(6) Motion and stipulations, Hanya Star has not appeared in this action and
12 waives no objection or defense relating to service and jurisdiction; and

13 WHEREAS, the parties dispute whether the FAC was filed timely and/or whether the FAC
14 states valid claims for which relief can be granted and/or whether the FAC addresses the issues raised in
15 the Defendants’ respective 12(b)(6) Motions to Dismiss referred to above; and

16 WHEREAS, the parties recognize that, absent a stipulation of the type set forth below, resolving
17 the issue of the timeliness of the filing of the FAC would involve time and expense for the parties and
18 the Court. and

19 WHEREAS, if the FAC were deemed to be timely filed on March 11, 2011, the response of
20 each Defendant would be due on March 25, 2011, absent a stipulation extending such time; and,

21 WHEREAS the parties recognize that by entering into this Stipulation: (a) each Defendant is (i)
22 reserving all of its rights, claims and defenses; (ii) preserving all rights to challenge the FAC, (iii)
23 preserving all rights relating to the sufficiency or propriety of the FAC, and is (iv) not waiving any
24 argument that the FAC fails to state a claim or is otherwise improper or insufficient; and, (b) that
25 Plaintiff contends that the FAC does properly address the issues raised by the Motions to Dismiss and
26 further contends that the FAC does state valid claims for which relief can be granted; and Plaintiff is
27 reserving all of its rights, claims and defenses; and

28 WHEREAS, in order to allow the parties to resolve the issue of the timeliness of the filing of the

1 FAC and to allow Defendants sufficient time to evaluate the FAC and respond thereto, the parties are
2 entering into the following Stipulation.

3 **STIPULATION**

4 NOW THEREFORE, Plaintiff and Defendants, by and through their respective undersigned
5 counsel, hereby agree and stipulate as follows:

6 1. The First Amended Complaint filed on March 11, 2011, that is, the FAC referred to
7 above, will be deemed to be the operative complaint in this action, and Defendants consent to the filing
8 of the FAC and stipulate that the FAC can be deemed timely filed, Defendants reserving all rights as set
9 forth herein; and

10 2. Each Defendant shall have up to and including April 8, 2011, to respond to the FAC,
11 whether by motion, answer or otherwise; and

12 3. If the response of either Defendant to the FAC is a motion, whether a Motion to Dismiss
13 the FAC (or any portion thereof) or otherwise, such Defendant(s) shall notice the hearing on any such
14 Motion for May 13, 2011, or as soon thereafter as the Court's schedule permits; and

15 4. iTalk shall withdraw Talk's Feb. 14 Rule 12(b)(6) Motion to Dismiss the original
16 Complaint, without prejudice to, and reserving, (i) any and all of its rights, claims and defenses; (ii) all
17 rights to challenge the FAC, (iii) all rights relating to the sufficiency of the FAC, and is (iv) any and all
18 arguments that the FAC fails to state a claim or is otherwise improper or insufficient; and,

19 5. Hanya Star shall withdraw Hanya Star's Feb. 18 Rule 12(b)(6) Motion to Dismiss the
20 original Complaint, without prejudice to, and reserving, (i) any and all of its rights, claims and defenses;
21 (ii) all rights to challenge the FAC, (iii) all rights relating to the sufficiency of the FAC, and is (iv) any
22 and all arguments that the FAC fails to state a claim or is otherwise improper or insufficient; and,

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1 6. Hanya Star's Feb. 18 Rule 12(b)(5) Motion to Dismiss for insufficient service remains
2 pending and all currently scheduled dates relating to such motion, including the March 25, 2011, date
3 for the filing of Hanya Star's reply and the scheduled hearing on April 22, 2011, at 9:00 a.m., shall
4 remain in effect.

5 SO STIPULATED.

6 IDELL & SEITEL LLP

7 Dated: March 22, 2011 By: Richard J. Idell/
8 Richard J. Idell
9 Attorneys for Plaintiff U2 HOME ENTERTAINMENT,
INC.

10 BAKER & MCKENZIE LLP

11 Dated: March 22, 2011 By: Tod L. Gamlen/
12 Tod L. Gamlen
13 Attorneys for Defendant
iTALK GLOBAL COMMUNICATIONS, INC.

14 FENWICK & WEST LLP

15 Dated: March 22, 2011 By: Liwen A. Mah/
16 Liwen A. Mah
17 Attorneys for Defendant
18 HANYA STAR CULTURE & TECHNOLOGY CO.,
LTD.

19 **ATTESTATION OF CONCURRENCE**

20 I, Richard J. Idell, attest that I am one of the attorneys for Plaintiff U2 Home Entertainment,
21 Inc., and as the ECF user and filer of this document, I attest that, pursuant to General Order No.
22 45(X)(B), concurrence in the filing of this document has been obtained from Tod L. Gamlen and Liwen
23 Mah, the above signatories.

24
25 Dated: March 22, 2011 By: Richard J. Idell/
26 Richard J. Idell

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~~PROPOSED~~ ORDER

THE ABOVE STIPULATION IS ADOPTED BY THE COURT AND PURSUANT TO SUCH STIPULATION, IT IS HEREBY ORDERED that:

1. The First Amended Complaint (“FAC”) filed on March 11, 2011, supersedes the Complaint, is the operative pleading in this matter, and will be deemed timely filed; and

2. Defendants shall have up to and including April 8, 2011, to file a response to the FAC, whether by motion, answer or otherwise; and

3. If the response of either Defendant to the FAC is a motion, whether a Motion to Dismiss the FAC (or any portion thereof) or otherwise, such Defendant shall notice the hearing on any such Motion for ~~May 13, 2011, or as soon thereafter as the Court’s schedule permits;~~ and June 3, 2011 at 9:00 a.m.

4. The motion to dismiss for insufficient service filed by Hanya Star on February 18, 2011, pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure remains pending and all currently scheduled dates relating to such motion, including the March 25, 2011, date for the filing of Hanya Star’s reply and the scheduled hearing on April 22, 2011, at 9:00 a.m., shall remain in effect.

IT IS SO ORDERED.

Dated: March 23, 2011



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