

**THIRTIETH ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT
COMPETITION 2025-2026**

**BEFORE THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, NETHERLANDS**

INTERNATIONAL COURT OF JUSTICE



**THE CASE OF QUESTIONS RELATING TO PRIOR INFORMED CONSENT AND
BENEFIT SHARING IN THE CONTEXT OF DE-EXTINCTION**

**ANECOYON
(APPLICANT)**

V

**RIDUS
(RESPONDENT)**

MEMORIAL FOR THE RESPONDENT

2026

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TABLE OF ABBREVIATIONS

¶	Paragraph
16/2	Decision adopted by the Conference of the Parties to the Convention on Biological Diversity on 1 November 2024, 16/2. Digital sequence information on genetic resources
16/2 Sectors	Indicative list of sectors that may benefit directly or indirectly from the use of digital sequence information on genetic resources in CBD Decision 16/2 on Digital sequence information on genetic resources Enclosure 1
ABS	Access and Benefit Sharing
AHOEWG	Ad Hoc Open Ended Working Group
AHTEG	Ad Hoc Technical Expert Working Group
Parties	Anecoyon and Ridus
AZA	Association of Zoos and Aquariums
Cartagena Protocol	Cartagena Protocol on Biosafety
CBD	Convention on Biological Diversity

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Clarifications	Thirtieth Annual Stetson International Environmental Moot Court Competition 2025-2026 Clarifications to the Record
COP	Conference of the Parties to the CBD
DSI	Digital sequence information on genetic resources
EAZA	European Association of Zoos and Aquarium
EIA	Environmental Impact Assessment
Fossil	The best-preserved fossil of the Royal panther loaned in 2009
ICJ	International Court of Justice
ISIC	International Standard Industrial Classification of all Economic Activities
ITPGFRA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUCN	International Union for Conservation of Nature
Loan	The loan agreement for the best-preserved fossil of the Royal panther between the National Museum of Ridus and Anecoyon's Ministry of Natural Resources
LMO	Living Modified Organism

Museum	National Museum of Ridus
Memorial	Memorial for the Respondent
Project	The de-extinction project conducted by Ridus
Protocol	Nagoya Protocol on Access to Genetic Resources and Benefit-sharing
Panthers	The Royal panthers, Ixchel and Itzamna
PIC	Prior Informed Consent
RP	The Royal panther
R&D	Research and development
Record	30th Annual Stetson International Environmental Moot Court Competition 2025-2026 Record
RP	The Royal panther as a species
SAP	Sidney Animal Park
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
TRIPS	World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCLOS	United Nations Convention on the Law of the Sea

VCLT	Vienna Convention on the Law of Treaties
WAZA	World Association of Zoos and Aquariums
WG	Working Group
WG-ABS	Ad Hoc Open-ended Working Group on Access and Benefit-Sharing
WG-DSI	Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources
WG-LTE	Ad Hoc Working Group of Legal and Technical Experts

QUESTIONS PRESENTED

- 1 Whether Ridus's conduct complied or violated the prior informed consent provisions of the CBD and the Nagoya Protocol, to the extent they are applicable;
- 2 Whether Anecoyon's refusal to consent based on its objections to de-extinction is counter to the CBD's objectives;
- 3 Whether, as an initial matter, DSI used for de-extinction activities is "biotechnology" for the purposes of the CBD and the Nagoya Protocol;
- 4 Whether the Sidney Animal Park is a user of DSI on genetic resources for purposes of CBD Decision 16/2 and whether the Sidney Animal Park is engaged in commercial activity covered by a sector currently engaged in CBD Decision 16/2.

STATEMENT OF JURISDICTION

Pursuant to Article 40(1) of the Statute of the International Court of Justice, Anecoyon and Ridus have submitted the following dispute to the ICJ by Special Agreement as contained in Annex A of the Record, including the Clarifications.

Pursuant to Article 26 of the Rules of Court, the Registrar of the Court has acknowledged the receipt of the Special Agreement to the Parties on July 31, 2025.

Pursuant to Article 36(1) of the ICJ Statute, the Parties have agreed that the Court has jurisdiction to decide this matter. Accordingly, they request the Court to adjudge the merits of this case following the rules and principles of general international law, as well as any applicable treaties. The Parties further request the Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgement on the questions presented in this matter. The Parties shall accept the ICJ's decision as final and binding.

STATEMENT OF FACTS

Both parties once belonged to a single kingdom but became independent States after 1914. Fossils of the RP, which went extinct 6,000 years ago, can be found in both States. The RP previously roamed both territories and is historically linked to the Panthera people, who currently only inhabit Ridus. The Fossil—discovered in Anecoyon’s territory in 1901—was loaned to the Museum by Anecoyon “for the purposes of education and scientific research” for 20 years.

In 2022, the Museum, a state organ of Ridus, successfully extracted DNA from the Fossil and announced its plans to resurrect the RP and rewild future Panthers in a government-protected area. Anecoyon contended that Ridus failed to obtain PIC from Anecoyon, and subsequently passed a domestic prohibition in December 2023 on the utilisation of genetic resources for de-extinction, and demanded the Fossil’s return. Ridus complied but continued using the RP’s DSI for the Project.

In August 2024, Ridus completed the RP’s reference genome and availed the DSI publicly, having obtained the support and consent of its Panthera communities for the Project. In December 2024, the Panthers were resurrected using CRISPR technology and housed in SAP, a WAZA-accredited non-profit organisation. To maintain the Panthers, visitors, except for Panthera members, were charged an additional 40.00 USD to view the Panthers. Excess revenue funded SAP’s captive breeding of other transboundary species.

In April 2025, Anecoyon claimed SAP must contribute to the Cali Fund under 16/2. After failed negotiations, in the spirit of cooperation, Ridus accepted that SAP meets 16/2’s financial thresholds, and agreed to facilitate benefit-sharing if an international tribunal decides that SAP is a user of DSI conducting commercial activity within the 16/2 Sectors.

SUMMARY OF ARGUMENTS

I. RIDUS HAS NOT VIOLATED ANY PIC OBLIGATION

No PIC obligation arises under the CBD and the Protocol. First, the Protocol does not apply retroactively because the Fossil was loaned before 2015 (when both parties ratified the Protocol). Even if the Protocol applies, Anecoyon is not the “country providing genetic resources”, as Article 6 of the Protocol refers only to resources from extant species. Second, a separate, independent PIC obligation does not arise under the CBD, as Article 15 of the CBD is substantially the same as Article 6 of the Protocol. Third, Ridus has a claim to the Fossil under Article 11 of the Protocol because the RP was a transboundary species, and therefore, the “same genetic resources”. In any case, Ridus has fulfilled any PIC obligation via the Loan which authorised using the Fossil for “education and scientific research” purposes.

II. ANECOYON’S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS COUNTER TO THE CBD’S OBJECTIVES

Preliminarily, de-extinction is environmentally sound. Ridus has adopted appropriate risk management safeguards. Anecoyon’s speculations of ecological, moral and animal welfare harms are inflated, failing to consider Ridus’s cautious, methodical approach to the Project. Moreover, de-extinction furthers the CBD’s objectives in Articles 8, 9 and 12 by restoring ecosystems, aiding the recovery of threatened species, and developing technologies that promote conservation and sustainable use. Anecoyon’s blanket prohibition of the utilisation of genetic resources for de-extinction prevents any benefit of de-extinction from arising.

III. DSI USED FOR DE-EXTINCTION ACTIVITIES IS NOT “BIOTECHNOLOGY”

The Panthers are not “products” within the CBD’s and the Protocol’s definition of “biotechnology”. First, they were created for conservation, not the market. Second, they are living animals with intrinsic value, which discussions on DSI-derived products did not contemplate. Third, “biotechnology” cannot evolutively interpreted to include de-extinction, as it would stretch the Protocol’s object beyond its intended scope.

IV. SAP IS NOT A USER OF DSI ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A 16/2 SECTOR

SAP does not fulfil the requirements under 16/2. First, SAP does not use DSI, but merely houses and cares for the Panthers. Secondly, SAP is a downstream beneficiary, which 16/2 should not catch. Thirdly, SAP’s activities are non-commercial given the Project’s substantial purpose of environmental restoration and rewilding. Further, the existence of revenue alone does not make an activity commercial; what matters is whether profit was intended and how the revenue was used. Fourthly, SAP’s activities are classified as Botanical and Zoological Gardens and Nature Reserves Activities under ISIC, falling outside of the 16/2 Sectors.

ARGUMENTS

I. RIDUS DID NOT VIOLATE ANY PIC OBLIGATIONS

The RP went extinct due to overhunting by ancestors of the Panthera people. The Panthera only reside in Ridus today.¹ The Fossil was discovered in 1901, in what later became Anecoyon's territory after 1914.² The Museum entered into the Loan with Anecoyon to use the Fossil "for education and scientific research" purposes, which culminated in the Project.³ Subsequently, Anecoyon claimed that Ridus violated the PIC provisions under the Protocol and the CBD, but **(A)** the Protocol and CBD are inapplicable, and in any event, **(B)** Ridus has obtained PIC under both treaties.

A. THE CBD AND THE PROTOCOL ARE INAPPLICABLE

(1) *The Protocol cannot be retroactively applied*

To access genetic resources, parties to the CBD⁴ and the Protocol⁵ are obligated to obtain PIC.⁶ However, this obligation did not arise because the VCLT, which binds both Parties,⁷ prohibits the retroactive application of treaties.⁸ The Fossil was loaned to Ridus in 2009, before both Parties

¹ *Record*, ¶¶5 & 7.

² *Record*, ¶¶2 & 15.

³ *Record*, ¶¶15 & 16.

⁴ CBD, art. 15, *opened for signature* June 5, 1992, 1760 U.N.T.S. 798 (entered into force Dec. 29, 1993).

⁵ Protocol, art. 6, *opened for signature* Feb. 2, 2011, 3008 U.N.T.S. 3 (entered into force Oct. 12, 2014) [hereinafter Protocol]

⁶ CBD, art. 15(5); Protocol, art. 6(1).

⁷ *Record*, ¶9.

⁸ VCLT, art. 28, *opened for signature* May 23, 1969, 1155 U.N.T.S. 311 (entered into force Jan. 27, 1980).

ratified the Protocol in 2015.⁹ Article 3 of the Protocol, which states that the Protocol applies to genetic resources within the scope of Article 15 of the CBD, does not extend the Protocol's application to resources accessed before its ratification. Instead, its plain wording limits genetic resources that are accessed after the Protocol's entry into force to that as defined in Article 15 of the CBD.¹⁰ This conclusion is reinforced by state practice¹¹ from Nigeria, Japan, and Brazil.¹²

(2) *Further and alternatively, the requirements for PIC to arise under both treaties are not met*

No PIC obligation arises under the CBD and the Protocol. First, both Article 6(1) of the Protocol and Article 15(5) of the CBD obligate parties to seek PIC from the “country providing such resources”, which must have collected the genetic resource from *in-situ* sources. “*In-situ* sources” require that the source of the genetic resource exists within current ecosystems and natural habitats.¹³ An ecosystem is a dynamic complex of living organisms and their non-living environment interacting as a functional ecological unit.¹⁴ The source of the Fossil is the extinct RP, which is not part of the current ecosystem.¹⁵ Hence, the PIC obligation under the Protocol is not triggered.

Secondly, even if the Protocol applies, the PIC obligation under Article 6(1) is displaced by the obligation to cooperate under Article 11(1), which arises because the phrase “same genetic

⁹ *Record*, ¶11.

¹⁰ Protocol, art. 3.

¹¹ VCLT, art. 31(3)(b).

¹² Secretariat of the CBD, *Report of the Expert Meeting on Article 10 of the Nagoya Protocol (EM-2016)*, 12 & 22, U.N. Doc. UNEP/CBD/ABS/A10/EM/2016/1/3 (Jan. 3, 2016).

¹³ CBD, art. 2.

¹⁴ *Ibid.*

¹⁵ *Record*, ¶7.

resources” refers to resources from the same species and not the specific resource used. This interpretation accords with the object of the Protocol—for states to equitably benefit even when resources are found in multiple states but share the same genetic and biochemical characteristics.¹⁶ While the Fossil was not found in Ridus, other fossils from the RP were found there, though they were not as well-preserved as the Fossil due to geological and climatic differences.¹⁷ Being from the same species, such fossils must have necessarily shared the same genetic and biochemical characteristics as the Fossil. Moreover, when the Fossil was discovered, Mammuthus was not yet divided into Anecoyon and Ridus.¹⁸ Article 11(1) of the Protocol applies instead of Article 6(1), in line with the Protocol’s object, which reaffirms the sovereign rights of states over their natural resources.¹⁹ Ridus’s negotiations indicated its effort to cooperate with Anecoyon on its use, even if negotiations ultimately failed.²⁰ States can choose their method of cooperation, including negotiations, as long as they act in good faith, with due diligence.²¹ Good faith is satisfied if parties conduct negotiations meaningfully.²² Over multiple diplomatic exchanges, Ridus reassured Anecoyon of the benefits of de-extinction and the Panthers’ welfare, but to no avail.²³

¹⁶ Thomas Greiber et al., *An Explanatory Guide to the Nagoya Protocol on ABS*, IUCN Environmental Policy and Law Paper No. 83, 134, (2012) [hereinafter IUCN, *An Explanatory Guide*].

¹⁷ *Record*, ¶6.

¹⁸ *Record*, ¶¶2 & 15.

¹⁹ Protocol, Preamble ¶3.

²⁰ *Record*, ¶¶19–24.

²¹ *Obligations of States in Respect of Climate Change*, Advisory Opinion, 2025 I.C.J. 187, ¶262 (Jul. 23) [hereinafter *Climate Change AO*].

²² *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Maced. v. Greece)*, Judgment, 2011 I.C.J. 644, ¶134 (Dec. 5).

²³ *Record*, ¶19.

B. IN ANY EVENT, RIDUS HAS OBTAINED PIC

(1) *Ridus obtained PIC through the Loan*

Absent national legislation at the time of access, Article 6(3)(e) of the Protocol and Article 15(4) of the CBD obligates Anecoyon to provide a permit, or its equivalent, as evidence of it granting PIC.²⁴ The Loan between the Parties qualifies as such, since “scientific research” envisioned in the Loan included the Project. The plain meaning of “scientific research” is investigation or experimentation aimed at discovering facts and their practical application.²⁵ This encompasses the process of de-extinction—namely, the extraction of DNA from the Fossil and the creation of the reference genome,²⁶ followed by its practical application through genetically engineering cougar cells using CRISPR technology and implanting the embryos into a host cougar.²⁷

The Loan’s silence on de-extinction is not a bar, as “scientific research” can be evolutively interpreted to include de-extinction projects. Evolutive interpretation is presumed to have been intended if parties were aware that the term’s meaning was likely to evolve over time, and the agreement spans a long period.²⁸ The Parties intentionally used the broad term “scientific research” knowing that science evolves continuously and rapidly with frequent new breakthroughs. The 20-

²⁴ Protocol, art. 6(3)(e); CBD, art. 15(4).

²⁵ *Research*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/research> (last visited Nov. 17, 2025).

²⁶ *Record*, ¶16.

²⁷ *Record*, ¶31.

²⁸ Dispute Regarding Navigational and Related Rights (Costa Rica v Nicar.), Judgment, 2009 I.C.J. 213, ¶66 (Jul. 13) [hereinafter *Navigational Rights*].

year loan duration is sufficiently long for major scientific advancements to emerge, since the body of scientific knowledge doubles in 20 years.²⁹

(2) *Anecoyon's newly enacted national legislation does not vitiate the consent obtained*

Anecoyon's national legislation prohibiting the use of genetic resources for de-extinction purposes was enacted in 2023,³⁰ long after the Loan, and hence, cannot retroactively apply to the Fossil. At the time of access, benefit sharing was mainly governed by contractual means³¹ of upholding mutually agreed terms in good faith.³² By renegeing on the Loan, which already granted PIC for the Project (as argued above),³³ Anecoyon has failed to act in good faith.

²⁹ Lutz Bornmann, et al. *Growth Rates of modern science*, 8 Humanities Social Sciences Communications 224, 224, (2021).

³⁰ *Record*, ¶24.

³¹ CBD, art. 15(7); Protocol, art. 6(3)(e).

³² COP to the CBD, *Report of the Panel of Experts on ABS*, ¶162, UNEP/CBD/COP/5/8 (Nov. 2, 1999).

³³ *Memorial*, I.B(1).

II. ANECOYON'S REFUSAL TO CONSENT BASED ON ITS OBJECTION TO DE-EXTINCTION IS COUNTER TO THE CBD'S OBJECTIVES

After the Museum extracted DNA from the Fossil in 2022, Ridus announced its plan to resurrect and rewild the RP in protected areas, and sought Anecoyon's consent in good faith.³⁴ Despite Ridus's assurances regarding Anecoyon's concerns and the EIA on the Project confirming benefits,³⁵ Anecoyon demanded for the Fossil's return and the Project's abandonment. Anecoyon's refusal to consent contradicts the CBD's objectives, as the Project (A) aligns with those objectives and (B) is environmentally sound.

A. RIDUS'S DE-EXTINCTION PROJECT ALIGNS WITH THE CBD'S OBJECTIVES

The CBD's conservation objective is advanced via obligations to rehabilitate and restore degraded ecosystems; adopt recovery and rehabilitation measures for threatened species and appropriately reintroduce them into their natural habitats; and promote research which contributes to conservation and sustainable biodiversity.³⁶ The Project furthers these obligations. While resources derived from extinct species fall outside the CBD's scope,³⁷ the use of such resources for the conservation of biodiversity falls within the CBD's scope. The CBD's express reference to only extant species does not take away from the lack of restrictions how resources, including that from extinct species, can be used to operationalise its provisions and achieve its objectives.

³⁴ *Record*, ¶¶16 & 23.

³⁵ *Record*, ¶19; *Clarifications*, A1.

³⁶ CBD, arts. 8(f), 9(c) & 12(b).

³⁷ *Memorial*, I.A(2).

(1) *De-extinction rehabilitates degraded ecosystems in accordance with Articles 8 and 9*

The Project is intended to rehabilitate ecosystems which have degraded as a result of the RP's extinction.³⁸ Their reintroduction could fill ecological niches,³⁹ thereby re-establishing ecological functions and critical interactions between species, helping existing species thrive, and rehabilitating degraded habitats.⁴⁰ For instance, the reintroduction of wild European bison in Kent created climate-resilient landscapes and helped other species thrive due to their natural behaviour, such as grazing, eating bark, and felling trees.⁴¹ The reintroduction of the Woylie in Australia has improved soil quality and seed dispersal, benefitting co-existing species.⁴² The revival of the RP can have similar benefits—restoring lost ecological interactions and rehabilitating their native ecosystems.

³⁸ *Record*, ¶19.

³⁹ Erin Okuno, *Frankenstein's Mammoth*, 43 *Ecology Law Quarterly* 581, 590, (2016) [hereinafter Okuno, *Frankenstein's Mammoth*]; *IUCN SSC Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit* (May 18, 2016), at 7 [hereinafter IUCN 2016 Guiding Principles].

⁴⁰ *Ibid.*; Beth Shapiro, *How to Clone a Mammoth* (Hardcover ed. 2015), 10 [hereinafter Shapiro, *Mammoth*]; Richard Corlett, *Restoration, reintroduction, and rewilding in a changing world*, 31 *Trends in Ecology and Evolution* 453, (2016).

⁴¹ Sally Smith, *New research suggests bison are climate heroes*, KENT WILDLIFE TRUST (May 22, 2024), <https://www.kentwildlifetrust.org.uk/news/new-research-suggests-bison-are-climate-heroes> (last visited Nov. 17, 2025).

⁴² *Endangered bettong reintroduced in Australia after more than a century*, NEW SCIENTIST (Aug. 24, 2011), <https://www.newscientist.com/article/2287900-endangered-bettong-reintroduced-in-australia-after-more-than-a-century/> (last visited Nov. 17, 2025).

(2) *Ridus has adopted appropriate measures to reintroduce the Panthers in accordance with Article 8(g)*

Although the Project comes with risks, Ridus has taken precautions in its implementation.⁴³ The precautionary approach stipulates, where there is a risk of significant harm, parties are obligated to take appropriate cost-effective measures to prevent such harm,⁴⁴ for instance, by carrying out EIAs and notifying other states.⁴⁵ Ridus has done so by conducting an EIA prior to the Project, which reflected net positive benefits.⁴⁶ As the State conducting the Project, Ridus is best placed to assess its nature and magnitude through the EIA and determine the EIA's content.⁴⁷ Anecoyon's disagreement with the EIA's conclusions therefore cannot affect its validity. Ridus also proactively notified other States on the Project's commencement and addressed Anecoyon's concerns through diplomatic means.⁴⁸

Further, the duty of due diligence requires States to take measures to prevent activities within their jurisdiction from causing significant environmental harm abroad by adopting and enforcing appropriate regulatory systems.⁴⁹ Ridus adopted such measures by engaging SAP⁵⁰—a WAZA-accredited organisation,⁵¹ indicating it meets international animal welfare and ethical

⁴³ CBD, Preamble ¶9; CBD, art. 8(g).

⁴⁴ Climate Change AO, *supra* note 21, ¶293.

⁴⁵ *Id.*, ¶¶297 & 299.

⁴⁶ *Clarifications*, A1.

⁴⁷ Climate Change AO, *supra* note 21, ¶298.

⁴⁸ *Record*, ¶¶16 & 19.

⁴⁹ Climate Change AO, *supra* note 21, ¶280—281.

⁵⁰ *Record*, ¶33.

⁵¹ *Ibid.*

standards⁵²—and by planning for controlled rewilding of the Panthers in a government-owned protected area, where they will be closely monitored,⁵³ ensuring both environmental safety and Panther welfare.

(3) *De-extinction promotes research that contributes to conservation in accordance with Article 12*

Technology developed during the de-extinction process potentially aids the conservation of existing species.⁵⁴ For instance, genetic sequencing technologies developed during the Dire Wolf project enabled the cloning of four red wolf pups, which preserved the lineage of the remaining 16 wild red wolves.⁵⁵ The cloning of endangered black-footed ferrets in 2024 increased the species' genetic diversity, fertility rates, and resistance against diseases, resolving problems which arose from the limited genetic diversity of the current population.⁵⁶ Further, surplus Panther-viewing fees contribute to SAP's captive breeding programme,⁵⁷ which is similar to the AZA's Species

⁵² AZA, *The Accreditation Standards & Related Policies* (2026), https://www.aza.org/assets/2332/accred_standards.pdf; *Animal Welfare*, ZOO AND AQUARIUM ASSOCIATION AUSTRALIA, <https://zooaquarium.org.au/public/Public/Animal-Welfare/The-Five-Domains.aspx?hkey=33869d99-0a7c-4616-823b-2032848d0829> (last visited Nov. 17, 2025).

⁵³ *Record*, ¶35.

⁵⁴ Stephen Turner, et al., *De-extinction technology and its application to conservation*, *Journal of Heredity*, 11, (2025) [hereinafter Turner, *De-extinction technology*].

⁵⁵ Joseph Hinton, *Is Cloning the Future of Red Wolf Conservation? No.*, WOLF CONSERVATION CENTER (Apr. 9, 2025), <https://nywolf.org/2025/04/is-cloning-the-future-of-red-wolf-conservation-no>.

⁵⁶ *Innovative Cloning Advancements for Black-footed Ferret Conservation*, U.S. FISH AND WILDLIFE SERVICE (Apr. 17, 2024), <https://www.fws.gov/press-release/2024-04/innovative-cloning-advancements-black-footed-ferret-conservation>; Will Sullivan, *Scientists Clone Two Black-Footed Ferrets*, SMITHSONIAN MAGAZINE (Apr. 22, 2024), <https://www.smithsonianmag.com/smart-news/scientists-clone-two-black-footed-ferrets-from-frozen-tissues-in-conservation-effort-180984203/>.

⁵⁷ *Record*, ¶35.

Survival Plan—a programme which contributes to conservation by maintaining genetically viable populations of threatened species and facilitating their potential reintroduction into habitats.⁵⁸

B. ANECOYON'S REFUSAL CONTRAVENES ART 15(2) OF THE CBD

Although access to the Fossil is subject to Anecoyon's national legislation,⁵⁹ Article 15(2) of the CBD obligates States to “facilitate access to genetic resources for environmentally sound uses” and “not to impose restrictions” contrary to the CBD's objectives. On its plain meaning, “environmentally sound uses” means activities “not harmful or wrong[ful]” to the environment.⁶⁰ The *travaux préparatoires* further supports this definition, which describes such uses as having no “negative impacts on social, economic and environmental development”.⁶¹ Ridus's phased implementation of the Project and active management of ecological risks⁶² show that the Project meets this standard. The moral, welfare, or ecological harms that Anecoyon alleges, which it bears the burden to prove,⁶³ are unfounded. Thus, Anecoyon's blanket restriction prevents any and all benefits of de-extinction, frustrating the CBD's objectives.

(1) De-extinction complements, not undermines, conservation

Anecoyon's claim that de-extinction causes moral harms by undermining conservation support,⁶⁴ leading to its abandonment, is an empirically unfounded argument—the option to right past wrongs

⁵⁸ *Clarifications*, A4.

⁵⁹ CBD, art. 15(1); *Record*, ¶25.

⁶⁰ *Sound*, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/sound> (last visited Nov. 17, 2025).

⁶¹ WG-LTE on Biodiversity, *A Preliminary Note on the concepts outlined in some of the key terms and phrases used in the Draft Articles*, ¶5, UNEP /Bio.Div/WG.2/3/6 (Apr. 29, 1999).

⁶² *Memorial*, II.A.

⁶³ *Corfu Channel (U.K. v. Albania)*, Judgment, 1949 I.C.J. 4, ¶18 (Apr. 9).

⁶⁴ *Record*, ¶18.

does not lead to abandoning all conservation efforts.⁶⁵ Clear, transparent public communication on the risks and capabilities of de-extinction can correct misconceptions, enhancing rather than diminishing conservation commitment.⁶⁶

In fact, de-extinction strengthens conservation engagement by drawing public interest, scientific investment, and renewed focus on the causes of extinction.⁶⁷ Ridus consulted and obtained the consent of the Panthera people for the Project,⁶⁸ aligning the Project with local conservation values and strengthening commitment to biodiversity stewardship.⁶⁹

(2) *Any significant animal welfare risks are managed*

Animal welfare concerns are not inherent to de-extinction. Similar concerns exist in other conservation practices,⁷⁰ such as ex-situ breeding programs or livestock breeding,⁷¹ but are mitigated through established regulatory safeguards, such as veterinary oversight, ethical review, and continuous monitoring.⁷² For instance, hormonal manipulation and stress in the assisted reproduction of Giant Pandas were mitigated by employing minimally invasive techniques,

⁶⁵ Shapiro, *Mammoth*, *supra* note 40, 203; Josh Donlan, *De-extinction in a crisis discipline*, 6 *Frontiers of Biogeography* 25, 26, (2014).

⁶⁶ Ronald Sandler, *Should We Engineer Species in Order to Save Them?*, 41 *Environmental Ethics* 221 (2019).

⁶⁷ Paul Jepson, *De-extinction beyond species: Restoring ecosystem functionality through large herbivore rewilding*, 3 *Cambridge Prisms: Extinction*, 1, (2025); Ben Jacob Novak, *De-extinction*, 9 *Genes*, 23-25, (2018) [hereinafter Novak, *De-extinction*].

⁶⁸ *Record*, ¶28.

⁶⁹ *Record*, ¶35.

⁷⁰ *Ibid.*

⁷¹ The Humane Society of the United States, *An HSUS Report: Welfare Issues with Genetic Engineering and Cloning of Farm Animals* (2006), <https://www.humaneworld.org/sites/default/files/docs/hsus-report-genetic-engineering-cloning-of-farm-animals.pdf>.

⁷² Heather Browning, *Won't somebody please think of the mammoths? De-extinction and animal welfare*, 31 *Journal of Agricultural and Environmental Ethics* 785, (2018).

veterinary sedation standards, and welfare monitoring;⁷³ potential skeletal and metabolic issues in the modification of AquAdvantage salmon were mitigated by conducting EIAs and animal welfare reviews;⁷⁴ and stress, confinement, and inbreeding depression in the breeding of Californian condors were mitigated by enrichment protocols and veterinary health management.⁷⁵ Ridus's undertaking to treat the Panthers humanely⁷⁶ is demonstrated by its specific choice to contract with SAP to house the Panthers. SAP's 200-hectare land area, WAZA's accreditation, and experience of caring for over 300 species of animals make it suitable in ensuring the Panthers' welfare.⁷⁷

(3) *Any unknown potential ecological consequences are mitigated*

Finally, the mere possibility of unknown ecological consequences is no bar as long as precautionary measures are taken.⁷⁸ Possible consequences, such as significant ecological disruption, can be remedied by adopting responsible conservation practices, such as phased reintroduction and post-release monitoring.⁷⁹ Ridus took similar precautions to prevent possible ecological risks of de-extinction, such as ecological disruption and ancient pathogen transmission.⁸⁰

⁷³ Ronald Swaisgood et al., *Commentary: Improving Well-Being for Captive Giant Pandas*, 22 *Zoo Biology* 347, (2003).

⁷⁴ Canadian Food Inspection Agency, Decision Document DD2016-117 (May 19, 2016), <https://inspection.canada.ca/en/plant-varieties/plants-novel-traits/approved-under-review/decision-documents/dd2016-117>; Canadian Science Advisory Secretariat, Research Document 2021/053, (Nov. 2021).

⁷⁵ *Encyclopedia of Biodiversity*, Volume 1 (Simon Levin et al. eds., 2001), 516-517.

⁷⁶ *Record*, ¶19.

⁷⁷ *Record*, ¶33.

⁷⁸ CBD, art. 8(g).

⁷⁹ Phillip Seddon et al., *Reversing Defaunation: Restoring Species in a Changing World*, 345 *Science* 406, 407, (2014).

⁸⁰ Josh Donlan, *De-extinction in a crisis discipline*, 6 *Frontiers of Biogeography* 25, 25, (2014).

III. DSI USED FOR DE-EXTINCTION ACTIVITIES IS NOT “BIOTECHNOLOGY” UNDER THE CBD AND THE PROTOCOL

The Panthers are housed and cared for in SAP.⁸¹ While Anecoyon claims that SAP must contribute to the Cali Fund under the Protocol’s ABS regime, this regime is not triggered because there is no utilisation of genetic resources “through the application of biotechnology”.⁸² DSI used for de-extinction does not constitute “biotechnology” as (A) the Panthers are not “products” and (B) “biotechnology” excludes de-extinction.

A. *THE PANTHERS ARE NOT “PRODUCTS”*

(1) *The Panthers were not made for sale*

“Biotechnology” refers to any technological application that uses biological systems or derivatives “to make or modify products for specific use”.⁸³ “Products” is defined as “something that is made to be sold”,⁸⁴ implying a transition from mere research material to a market-oriented output. This is further supported by supplementary material:⁸⁵ a 2008 report suggested that factors determining a “product” include its commercialisation and availability on the open market for sale,⁸⁶ with other WG reports referring to its ability to generate retail value.⁸⁷ ABS obligations in other instruments

⁸¹ *Record*, ¶33.

⁸² Protocol, art. 2(c).

⁸³ CBD, art. 2; Protocol, art. 2(d).

⁸⁴ *Product*, Dictionary.Cambridge.com,

<https://dictionary.cambridge.org/dictionary/english/product> (last visited Nov. 17, 2025).

⁸⁵ VCLT, art. 32.

⁸⁶ WG-ABS, *Report of the Group of Legal and Technical Experts*, ¶23, UNEP/CBD/WG-ABS/7/2 (Dec. 12, 2008) [hereinafter WG-ABS 2008 Report].

⁸⁷ AHOEWG on Benefit-sharing from the Use of DSI (WG-DSI), 2/1. *Further development of the multilateral mechanism for benefit-sharing*, 3, CBD/WGDSI/REC/2/1 (Aug. 16, 2024); WGDSI, *Reflections of the Co-Chairs*, 6, CBD/WGDSI/2/2/Add.1 (Jun. 16, 2024).

likewise suggest commercialisation is required.⁸⁸ For instance, the ITPGRFA—which shares the CBD’s objectives,⁸⁹ and was considered during the Protocol’s negotiations⁹⁰—only requires contribution to an international fund when a product is placed on the market.⁹¹ The TRIPS⁹² was likewise considered in pre-Protocol discussions.⁹³ It allowed governments to avoid patenting inventions that “protect human, animal or plant life or health”,⁹⁴ reflecting the intrinsic moral, ecological and public value of animals that render them unsuitable for commodification as mere “products”.⁹⁵ The Panthers were not manufactured for sale, but were created for ecological and cultural purposes. As regards their ecological objective, the Project aims to restore ecological balance and reverse past wrongs caused when the RP were hunted to extinction.⁹⁶ As regards their cultural objectives, the RP is integral to the Panthera people, evinced by their oral traditions and cave paintings of the RP.⁹⁷ The Panthera’s support for the Project further underscores the cultural significance of resurrecting the Panthers.⁹⁸

⁸⁸ VCLT, art. 31(3)(c); Oliver Dörr and Kirsten Schmalenbach (eds), *VCLT: A Commentary* (2nd ed. 2018), at 605 [hereinafter Dörr, *VCLT Commentary*].

⁸⁹ ITPGRFA, art 13(2), Jun. 29, 2004, 2400 U.N.T.S. 303 [hereinafter ITPGRFA].

⁹⁰ COP to the CBD, Decision adopted by the COP to the CBD at its seventh meeting, *VII.19 ABS as related to genetic resources (Article 15)*, 8, UNEP/CBD/COP/DEC/VII/19 (13 Apr., 2004) [hereinafter Decision VII/19].

⁹¹ ITPGRFA, *supra* note 8989, art. 1.

⁹² TRIPS, Annex 1C, 1869 U.N.T.S. 299 (5 Apr., 1994); Decision VII/19, *supra* note 90,90 8.

⁹³ Decision VII/19, *supra* note 90, 8.

⁹⁴ *Id.*, art. 27(3)(b).

⁹⁵ *Ibid.*

⁹⁶ *Record*, ¶¶19 & 36.

⁹⁷ *Record*, ¶7.

⁹⁸ *Record*, ¶28.

(2) *The Panthers are living organisms*

The definition of “product” is limited to manufactured, non-living products intended for market consumption, as outlined in discussions preceding 16/2.⁹⁹ Commissioned studies on DSI associated its use with products such as new medicines, cosmetic products, textiles and animal feed,¹⁰⁰ which are all non-living. Further, the AHTEG on Synthetic Biology defined “products” as “non-living entities”, distinguished from organisms created using synthetic biology techniques,¹⁰¹ and a 2024 study to develop the ABS mechanism only considered non-living entities such as new medicines, ingredients, new foods and nutritional supplements as products.¹⁰² This study is instructive¹⁰³ since the key sectors it considered subsequently formed the 16/2 Sectors.¹⁰⁴ Applying the doctrine of *ejusdem generis*,¹⁰⁵ DSI-associated “products” likewise do not include living organisms.

⁹⁹ VCLT, art. 32.

¹⁰⁰ WG-DSI, *Executive summary of studies commissioned pursuant to decision 15/9*, ¶9, CBD/WGDSI/2/2/Add.2 (Jun. 28 2024).

¹⁰¹ SBSTTA, *Synthetic Biology*, ¶33, UNEP/CBD/SBSTTA/20/8 (Mar. 8, 2016) [hereinafter SBSTTA, *Synthetic Biology*].

¹⁰² WG-DSI, *Studies commissioned further to decision 15/9*, 17, CBD/WGDSI/2/INF/1 (Jul. 29, 2024) [hereinafter WG-DSI, *Studies*].

¹⁰³ VCLT, art. 31(3)(a); *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14 (Apr. 20); *Whaling in the Antarctic (Austl. v. Japan)*, Judgment, 2014 I.C.J. 226, ¶168 (Mar. 31).

¹⁰⁴ WG-DSI, *Studies*, *supra* note 102, 17; COP to the CBD, Decision adopted by the COP to the CBD on 1 November 2024, *16/2. DSI on genetic resources*, Enclosure I at ¶1, CBD/COP/DEC/16/2 (Nov. 1, 2024) [hereinafter 16/2].

¹⁰⁵ VCLT, art. 31; Application for Review of Judgment No. 158 of the U.N. Administrative Tribunal, Advisory Opinion, 1973 I.C.J. 166, at ¶¶50—51 (Jul. 12); *Northern Cameroons (Cameroon v. U.K.)*, Judgment, Separate Opinion of Judge Sir Percy Spender, 1963 I.C.J. 15, at 91 (Dec. 2).

Further, the Protocol is inapplicable to resurrected animals since it only includes non-living products. Rather, the appropriate instrument is the Cartagena Protocol, which applies to LMOs,¹⁰⁶ defined as “any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology”.¹⁰⁷ That the Cartagena Protocol applies when it comes to living entities is further supported by the AHTEG on Synthetic Biology.¹⁰⁸ Since the Project used CRISPR technology to modify cougar cells, it constitutes synthetic biology,¹⁰⁹ a form of modern biotechnology,¹¹⁰ and the resulting Panthers constitute LMOs, invoking the Cartagena Protocol instead of the Protocol.¹¹¹

B. REGARDLESS, “BIOTECHNOLOGY” EXCLUDES DE-EXTINCTION

(1) *De-extinction could not have been contemplated by the drafters of the CBD and the Protocol*

Interpreting “biotechnology” with regard to the CBD’s context excludes de-extinction,¹¹² as de-extinction was not practical nor feasible when the CBD entered into force. Examples of sectors using biotechnology included agriculture, forestry, health, food security,¹¹³ with biotechnological

¹⁰⁶ Cartagena Protocol, art 1, *opened for signature* May 15, 2000, 2226 U.N.T.S. 208 (entered into force Sep. 11, 2003) [hereinafter Cartagena Protocol].

¹⁰⁷ *Id.*, art. 3(g).

¹⁰⁸ SBSTTA, *Synthetic Biology*, *supra* note 101101101, ¶39.

¹⁰⁹ Multidisciplinary AHTEG on Synthetic Biology, *Considerations on synthetic biology pursuant to decision 15/31*, 12, CBD/SYNBIO/AHTEG/2024/1/2 (Jan. 22, 2024).

¹¹⁰ SBSTTA, *Synthetic Biology*, *supra* note 101101101, ¶25.

¹¹¹ Cartagena Protocol, art 1.

¹¹² VCLT, art. 31(1).

¹¹³ AHWG of Experts on Biological Diversity, *Final Report of the Sub-working Group on Biotechnology*, 7, UNEP/Bio.Div/SWGB.1/5/Rev.1 (Nov. 28, 1990) [hereinafter SWGB, *Final Report*].

techniques including cell fusion, embryo transfer, recombinant DNA technology¹¹⁴—none of which allow for the resurrection of extinct animals.

Moreover, de-extinction did not exist when the CBD was drafted. De-extinction attempts before 1992 failed,¹¹⁵ and though the first nearly successful attempt at de-extinction was in 2003, the offspring died shortly due to a lung defect.¹¹⁶ Further, the crucial step of sequencing the entire genome required for de-extinction was only developed in 2010,¹¹⁷ and the specific CRISPR Cas-9 technology used in the Project was only published in 2012.¹¹⁸ Since the technologies required for de-extinction only developed following the entry into force of the CBD, parties could not have contemplated de-extinction to be practicable.

Even if “de-extinction” was practicable when the Protocol entered into force in 2014, it was not contemplated. Negotiations to the Protocol only contemplated physical genetic resources such as organisms and parts thereof, crops and micro-organisms,¹¹⁹ with DSI first raised only in December 2016 in Decision 2/14.¹²⁰ This is further supported by pre-Protocol discussions, with drafters’ having defined “gene modification” as a “[d]evelopment of new variations within non-human

¹¹⁴ COP to the CBD, *Intellectual Property Rights and Transfer of technologies which makes use of genetic resources*, footnote 4, UNEP/CBD/COP/2/17 (Oct. 6, 1995).

¹¹⁵ Beth Shapiro, *Pathways to de-extinction*, 31 *Functional Ecology* 996, 997, (2017).

¹¹⁶ Okuno, *Frankenstein’s Mammoth*, *supra* note 39, 590–591.

¹¹⁷ Vasundhra Dalal et al., *Advances and Challenges in Ancient DNA Research*, 14 *Genes* (Basel), 7, (2023).

¹¹⁸ Irina Gostimaskaya, *CRISPR-Cas9: A History of Its Discovery and Ethical Considerations*, 87 *Biochemistry* (Moscow) 777, (2022).

¹¹⁹ WG-ABS 2008 Report, *supra* note 868686, 12–13.

¹²⁰ COP Decision adopted by the Parties to the Protocol, *2.14 DSI on genetic resources*, 1, CBD/NP/MOP/DEC/2/14 (Dec. 16, 2016).

species”.¹²¹ Since de-extinction involves resurrecting species rather than mere gene variations, it was not contemplated.

(2) “Biotechnology” cannot be evolutively interpreted

“Biotechnology” cannot be evolutively interpreted as parties to the CBD and the Protocol did not intend such. A presumption of evolutive interpretation¹²² is rebuttable if a non-evolving intention is evident when the treaty was concluded.¹²³ Yet, CBD drafters intentionally refrained from amending the existing definition of “biotechnology” when government-appointed experts proposed expanding the CBD’s scope to address risks associated with biotechnology.¹²⁴ While that definition¹²⁵ was later rephrased, the substantial meaning of “biotechnology” was not expanded.¹²⁶ Despite risks which may arise as new biotechnology applications develop, the drafters intentionally chose not to address them, omitting the evolving nature of biotechnologies.

Even if a presumption of evolutive interpretation arises, interpreting “biotechnology” in light of the Protocol’s object and purpose excludes de-extinction. Evolutive interpretation must have regard to the treaty’s object and purpose to determine how the term should evolve,¹²⁷ with recourse to parties’ intention.¹²⁸ Parties to the Protocol intended to exclude DSI from the Protocol, with state practice stating that including DSI would disrupt ABS mechanisms by obviating the need for

¹²¹ *Ibid.*

¹²² *Navigational Rights*, *supra* note 28, ¶66.

¹²³ *Id.*, ¶63; Sondre Helmersen, *Evolutive Treaty Interpretation*, 6 EJLS 161, 176, (2013) [hereinafter Helmersen, *Evolutive Interpretation*].

¹²⁴ SWGB, *Final Report*, *supra* note 113113113, ¶¶21–22.

¹²⁵ Intergovernmental Negotiating Committee for a CBD, *Third Revised Draft CBD*, 5, UNEP/Bio.Div/N5-INC.3/2 (Oct. 9, 1991).

¹²⁶ CBD, art. 2; Protocol, art. 2(d).

¹²⁷ VCLT, art. 31(1); Helmersen, *Evolutive Interpretation*, *supra* note 123123, 166 & 174.

¹²⁸ *Id.*, 171.

users to seek access to the original genetic resource and allow users to bypass ABS procedures,¹²⁹ while imposing ABS rules on DSI could create administrative burdens that would impede research and hinder tracking of its origins.¹³⁰

¹²⁹ AHTEG on DSI, *Report of the AHTEG on DSI*, ¶20(c), CBD/DSI/AHTEG/2018/1/4 (Feb. 20, 2018).

¹³⁰ AHTEG on DSI, *Synthesis of views and information on the use of DSI*, 18, CBD/DSI/AHTEG/2018/1/2 (Jan. 9, 2018).

IV. SAP IS NOT A USER OF DSI AND IS NOT ENGAGED IN COMMERCIAL ACTIVITY WITHIN A 16/2 SECTOR

16/2 operationalises the global multilateral mechanism for the fair and equitable sharing of benefits arising from the use of DSI, established pursuant to Article 10 of the Protocol. Even if DSI used for de-extinction constitutes “biotechnology”, an entity must only contribute to the Cali Fund if it falls within a 16/2 Sector, is a user of DSI, and engages in commercial activity related to its use.¹³¹

SAP meets none of these criteria: it **(A)** falls outside all 16/2 Sectors, **(B)** is not a user of DSI, and **(C)** does not conduct commercial activity. Regardless, **(D)** SAP’s existing conservation efforts already fulfil the objectives of 16/2.

A. *SAP’S ACTIVITIES FALL OUTSIDE ALL 16/2 SECTORS*

An entity must contribute to the Cali Fund only if its principal activity falls within a 16/2 Sector. According to ISIC, which 16/2 expressly references, an entity’s “*principal activity*”—the activity which contributes most to the entity’s value —determines its classification.¹³² While SAP runs a captive breeding programme, it is ancillary to SAP’s main functions of housing and caring for more than 300 species of animals, placing SAP within the “Botanical and Zoological Gardens and Nature Reserves” classification. This is further confirmed by SAP’s WAZA accreditation.¹³³ WAZA, the global alliance of regional associations, national federations, zoos and aquariums, dedicated to the care and conservation of animals and their habitats internationally,¹³⁴ recognises strict international standards of animal care and conservation.

¹³¹ 16/2, *supra* note 104104104, ¶3.

¹³² ISIC, Rev.4, 20 (2008), ¶57.

¹³³ *Record*, ¶33.

¹³⁴ WAZA, <https://www.waza.org/> (last visited Nov. 17, 2025).

B. SAP IS NOT A USER OF DSI*(1) SAP's activities are not R&D*

An entity must directly or indirectly use DSI on genetic resources.¹³⁵ While “user of DSI” is undefined in the Protocol, the “utilisation of genetic resources” is defined as “conduct[ing] [R&D] on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology”.¹³⁶ State practice¹³⁷ has expressly stated that the “application of biotechnology” excludes activities in which genetic resources are not the object of R&D.¹³⁸ Research is defined as the systematic investigation into and study of materials to establish facts and reach new conclusions.¹³⁹ Therefore, SAP is not a “user of DSI” since it merely houses and cares for the Panthers,¹⁴⁰ and did not conduct R&D using the RP’s DSI. Instead, it was Salols Co. that used the RP’s DSI to resurrect the Panthers.

(2) SAP is a downstream beneficiary excluded by 16/2

SAP is a downstream beneficiary of Salols Co.’s DSI use. A mere beneficiary of DSI use is not equivalent to a “user of DSI”. 16/2 states that sectors which do not directly or indirectly use DSI need not contribute to the Cali Fund, even if they incidentally benefit from its use.¹⁴¹ The U.K.’s and EU’s ABS Regulations further affirm this.¹⁴² Since SAP merely houses and cares for the

¹³⁵ 16/2, *supra* note 104104104, ¶5.

¹³⁶ Protocol, art. 2(c).

¹³⁷ VCLT, art. 31(3)(b).

¹³⁸ Guidance document on the scope of application and core obligations of Regulation (EU) No. 511/2014 of 12 January 2021, 2021 O.J. (C 13), at 16.

¹³⁹ *Research*, OED.com, https://www.oed.com/dictionary/research_v1 (last visited Nov. 17, 2025).

¹⁴⁰ *Record*, ¶33.

¹⁴¹ 16/2, *supra* note 104104104, ¶5.

¹⁴² *Ibid.*

Panthers, it is not a “user of DSI” even if it benefitted from increased visitor footfall attracted by the Panthers.

Further, requiring contributions from far-removed, indirect “users” imposes an impracticable standard on parties. Decision 15/9 recognises that tracking all DSI use is impractical,¹⁴³ and that ABS obligations should be efficient, feasible, and provide legal certainty.¹⁴⁴ Adopting an overly broad interpretation of “user” that captures any exhibitor of a DSI-related creation not only creates uncertainty as to the extent of liability, but may also discourage non-profit corporations, such as zoos and museums, from carrying out conservation and innovation activities.

C. SAP’S ACTIVITIES ARE NOT COMMERCIAL

An activity is “commercial” if its purpose is to obtain economic benefit, pursuant to CITES Resolution 5.10.¹⁴⁵ CITES is a relevant rule of international law¹⁴⁶ that can be used to interpret 16/2 since the ICJ has interpreted treaty terms by referencing other instruments that contain similar language and are binding on both parties.¹⁴⁷ CITES is a recognised intergovernmental benchmark for safeguarding biodiversity in the trade and import of animals that Anecoyon and Ridus are parties to. Resolution 5.10 was meant to clarify the interpretation of “commercial” in CITES, and hence, is relevant for interpreting “commercial” in 16/2.¹⁴⁸

¹⁴³ Decision adopted by the COP to the CBD, 15/9. *Digital sequence information on genetic resources*, ¶7, CBD/COP/DEC/15/9 (Dec. 19, 2022).

¹⁴⁴ *Id.*, ¶7(a).

¹⁴⁵ CITES, *Definition of “primarily commercial purposes”*, ¶1b, Conf. 5.10 (Rev. CoP19) (Nov. 25, 2022) [hereinafter CITES, Resolution 5.10].

¹⁴⁶ VCLT, art. 31(3)(c).

¹⁴⁷ *Maritime Delimitation in the Indian Ocean (Som. v. Kenya)*, Judgment, 2017 I.C.J. 161, ¶89 (Feb. 2).

¹⁴⁸ CITES, Resolution 5.10, *supra* note 145, Preamble ¶4.

Mere revenue generation is insufficient grounds to conclude an activity is commercial—such revenue generated must be for the purpose of profit, as supported by state practice.¹⁴⁹ In Australia, the tribunal held that the mere charging of general admissions to view imported animals does not automatically render the importation of those animals commercial.¹⁵⁰ This extends where new exhibits increase the number of zoo visitors,¹⁵¹ since a zoo’s substantial purpose is education and conservation. Likewise, the U.S. court noted that a zoo’s role in public education and conservation indicates that the importation of animals was not primarily commercial.¹⁵² Linking commerciality to profit would make all zoos commercial, thereby expanding the ambit of commerciality beyond what CITES intended.¹⁵³

SAP is committed to education and conservation. Although the Panthers’ exhibition generated revenue, it was not for profit, but used for the Panthers’ care. Further, SAP only provides temporary housing for the Panthers as part of Ridus’s larger rewilding project aimed at restoring the ecosystem and reversing past wrongs,¹⁵⁴ consistent with SAP’s goals of education and conservation. Further, any excess funds went to the breeding and conservation of other transboundary species.¹⁵⁵ This program is similar to the EAZA and the AZA Species Survival Plan,¹⁵⁶ which have successfully maintained thriving animal populations.¹⁵⁷ SAP’s WAZA

¹⁴⁹ VCLT, art. 31(3)(b).

¹⁵⁰ *The International Fund for Animal Welfare (Australia) Pty Ltd* (2005) 93 ALD 594 (Australia Administrative Appeals Tribunal), ¶108.

¹⁵¹ *Id.*, ¶113.

¹⁵² *Born Free USA v Gale Norton* [2003] No. Civ. A.03-1497 JDB (U.S. District Court).

¹⁵³ *Ibid.*

¹⁵⁴ *Id.*, ¶19.

¹⁵⁵ *Record*, ¶35.

¹⁵⁶ *Clarifications*, A4.

¹⁵⁷ EAZA’s Ex-Situ Program, <https://www.eaza.net/eep-page-maned-wolf/> (last visited Nov. 17, 2025)

accreditation recognizes SAP's contribution to the conservation of species and ecosystems,¹⁵⁸ signifying its credibility and educational value, instilling in its visitors a strong sense of excitement about conservation.¹⁵⁹

D. IN ANY EVENT, SAP'S EXISTING CONSERVATION EFFORTS FULFIL THE OBJECTIVES OF 16/2

16/2 is intended to finance the CBD's objectives,¹⁶⁰ with ABS designed to ensure states who profit from nature contribute to its conservation.¹⁶¹ SAP's ongoing conservation and sustainable biodiversity efforts already fulfil the mechanism's conservation-financing objective. To require SAP to contribute again under 16/2's would penalise it.

¹⁵⁸ AZA, *Conservation*, <https://www.aza.org/conservation> (last visited Nov. 17, 2025).

¹⁵⁹ WAZA, *Committing to Conservation*, 17, (2015), https://www.waza.org/wp-content/uploads/2019/03/WAZA-Conservation-Strategy-2015_Portrait.pdf.

¹⁶⁰ 16/2, *supra* note 104104, ¶18.

¹⁶¹ *Record*, ¶39.

PRAYER FOR RELIEF

The Respondent respectfully requests the Court to adjudge and declare that:

- 1 Ridus's conduct complied with the PIC provisions in the CBD and the Protocol;
- 2 Anecoyon's refusal to consent based on its objections to de-extinction is counter to the CBD's objectives;
- 3 DSI used for de-extinction activities is not "biotechnology" for purposes of the CBD and the Protocol; and
- 4 SAP is not a user of DSI on genetic resources and is not engaged in commercial activity within a 16/2 Sector for purposes of 16/2.

Respectfully submitted,

AGENTS FOR THE RESPONDENT