Team 17

IN THE INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

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

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**ANECOYON** (APPLICANT)

v.

**RIDUS** (RESPONDENT)

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## MEMORIAL FOR THE APPLICANT

30th Annual Stetson International Environmental Moot Court Competition
2025–2026

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| | |
|---|---|
| Convention on Biological Diversity | CBD |
| Convention on International Trade of Endangered Species | CITES |
| International Court of Justice | ICJ |
| International Union for the Conservation of Nature | IUCN |
| Prior Informed Consent | PIC |
| Vienna Convention on the Law of Treaties | VCLT |
| Digital Sequence Information | DSI |
| Clustered Regularly Interspaced Short Palindromic Repeats | CRISPR |
| Access to Benefit Sharing | ABS |
| United Nations Conference on Trade and Development | UNCTAD |
| Conference Of the Parties | COP |
| United Nations Economic and Social Council | ECOSOC |

## QUESTIONS PRESENTED

**I.** Whether Ridus's conduct complied with or violated the prior informed consent provisions of the CBD and the Nagoya Protocol, to the extent they are applicable; and

**II.** Whether Anecoyon's refusal to consent based on its objections to de-extinction is counter to the CBD's objectives.

**III.** Whether, as an initial matter, DSI used for de-extinction activities is "biotechnology" for purposes of the CBD and the Nagoya Protocol; and

**IV.** If so, 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 listed in CBD Decision 16/2.

## STATEMENT OF JURISDICTION

In accordance with Article 40(1) of the Statute of the International Court of Justice ("ICJ"), Anecoyon and Ridus transmitted a Special Agreement to the Registrar of the Court on July 14, 2025. The Special Agreement provided that the Parties agreed to the jurisdiction of the Court and would not dispute the Court's jurisdiction in written or oral proceedings. Per the Special Agreement, the Parties submitted questions to the Court regarding substantive issues. The Registrar of the Court notified the Parties on July 14, 2025, of receipt of these questions and of entry of the case of Questions Relating to Prior Informed Consent and Benefit Sharing in the context of De-Extinction (Anecoyon v. Ridus) into the Court's General List No. 175.

## STATEMENT OF FACTS

Ridus and Anecoyon were a part of a single state from 1648-1914. Both acquired independence under the Treaty of Separation, becoming sovereign neighbor states with a shared border in the form of the Incilius River. Anecoyon is an economically weak country compared to Ridus according to the World Bank Classification system and has a population of 10 million people where its neighbor has 55 million people.

The Royal Panther [*Puma Royali*] was native to both territories but went extinct nearly 6,000 years ago. Historically the people of Panthera for whom the panther is significant were indigenous to both nations. Currently only Ridus possesses small organized communities. The best preserved specimen of the fossil was found in Anecoyons' territory and was leased to Ridus in 2009 for 20 years for education and scientific research.

The National Museum of Ridus, announced on 16th September 2022 that it had extracted DNA from the fossil to create the Royal Panther genome for the de-extinction of the animal and re-wilding efforts.

Anecoyon, on the 27th of September sent a diplomatic note expressing its concerns and stating that no further DSI should be taken from the fossil without prior informed consent, as it is the country of origin, which Ridus had assumed till now. A reply dated 6th October 2022 was sent by Ridus rejecting the concerns pointed out and stating that they did not require consent. In December 2023 Anecoyon passed legislation that banned the use of any of their genetic resources to be used towards de-extinction and rightfully demanded the return of the fossil. This was to ensure environmentally sound use of their genetic resources.

Ridus had publicized the extracted DSI, and continued the de-extinction project by the contracting Salols Co. Anecoyon had reiterated their concerns and absence of consent to such

uses or derivatives for these projects. Anecoyon refused to consider the two Royal Panthers, Ixchel and Itzamna, as an authentic member of the species. Ridus commercialized and monetized the DSI derived Panthers, and Anecoyon argued for the creation of a benefit-sharing mechanism. Ridus had accepted the financial thresholds under 16/2 were satisfied.

Ridus has refused to contribute to the Cali Fund under the justification that the Royal Panthers are not classified as 'biotechnology' and the Park does not classify as a user of DSI. After further negotiations Ridus conceded to the fact that Sidney Animal Park fulfilled the requirements in Decision 16/2 but still refused to support the Cali Fund. Anecoyon sees Ridus's position as counter to CBD Decision 16/2 and Ridus's own commitment to the Cali Fund.

## SUMMARY OF ARGUMENTS

### I. Ridus's conduct violated the prior informed consent provisions of the CBD and the Nagoya Protocol.

Anecoyon submits that Ridus did not obtain prior informed consent as required by the CBD and Nagoya Protocol. There was no legal certainty in the loan agreement that allowed Ridus to utilize the fossil for the purposes of de-extinction. Such use does not fall under the 'educational and scientific purposes' outlined in the loan agreement. Scientific purposes have to be interpreted narrowly; the involvement of de-extinction activities that risk severe ecological harm, as well as commercial benefit preclude it from assuming consent under the wording of the loan agreement. The lack of mutually agreed terms, and the clear objection of Anecoyon required a new permission if Ridus wished to utilize the fossil for de-extinction.

### II. Anecoyon's Refusal to Consent Based on Its Objections to De-Extinction Is Consistent with the Objectives of the Convention on Biological Diversity (CBD).

Anecoyon submits that the de-extinction project is in line with the objectives of the CBD. The reconstructed Royal Panther represents a proxy species, with potentially adverse impacts on biological diversity. The precautionary principle allows for the objection of Anecoyon to the de-extinction. Furthermore, Ridus' action contravenes established principles of conservation outlined in international conservation documents. The absence of a clear timeline or post-introduction plan demonstrates Ridus's inability or unwillingness to assume the requisite stewardship obligations, thereby undermining both environmental soundness and Anecoyon's sovereign right to precaution and protection.

### III. As an initial matter, DSI used for de-extinction activities is not "biotechnology" for purposes of the CBD and the Nagoya Protocol

Anecoyon submits that DSI used for de-extinction does not qualify as 'biotechnology' for the purposes of the CBD and Nagoya Protocol. Biotechnology in the context of the CBD refers to biotechnology based on genetic resources. DSI does not possess the properties of materiality, nor possesses 'functional units of heredity'. This impedes its classification as a 'genetic material.' Furthermore, lacking the elements of natural occurrence or traceability to an original natural resource, it also cannot be considered a 'derivative' of a genetic resource upon the rules of ordinary interpretation. Expanded interpretation cannot be used to include DSI because state practice has not uniformly evolved to reflect a consensus on a different understanding of the terminology found in the CBD and Nagoya Protocol.

## IV. If so, 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 listed in CBD Decision 16/2.

Anecyon contends that the Sidney Animal Park falls within the definition of a "user" of DSI. It actively performs commercial activity under CBD Decision 16/2, therefore is obligated to create a multilateral benefit sharing mechanism. The park qualifies as an indirect sector deriving an economic benefit from the display of DSI derived organisms, under Annex 2 and 3. Moreover, the park qualifies as a "user" under a purposive interpretation. The park operates as an ex-situ conservation institute by acquiring DSI derived Panthers,thereby falling within the ABS regime under UNCTAD. Furthermore, the park satisfies the monetary criteria set under the Annex 3 of CBD Decision 16/2 and constitutes a commercial entity. The commercialization of Panthers and downstream revenue generation from DSI utilization iterates park is involved in commercial activities.

## MAIN ARGUMENTS

## I. RIDUS'S CONDUCT COMPLIED VIOLATED THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD AND THE NAGOYA PROTOCOL

Anecoyon submits that Ridus's conduct constitutes a clear and comprehensive violation of the Prior Informed Consent ("PIC") requirements established under the Convention on Biological Diversity ("CBD") and the Nagoya Protocol.

Article 1 of the CBD[1] identifies the fair and equitable sharing of benefits arising out of the utilization of genetic resources as one of the Convention's core objectives. This is reemphasized in Article 6(1) of the Nagoya Protocol[2]. This objective accepts that access to genetic resources must occur only on the basis of lawful, authorized, and informed consent. Without PIC, there can be neither fairness nor equity, and the sovereign rights of the provider State are fundamentally compromised.

### A. The Royal Panther fossil qualifies as a genetic resource and Anecoyon as the 'country of origin'

Article 2 of the CBD[3] defines 'genetic resources' as: *'genetic material of actual or potential value'*[4]. The fossil, possessing DNA, allows it to qualify as a 'genetic resource' for the purposes of this article.

Subsequently, its discovery within Anecoyon's territory satisfies the requirements of Anecoyon being the 'country of origin' defined in the CBD as '*the country which possesses those genetic resources in in-situ conditions,'* as well as being the 'country providing genetic resources' as

[1] Article 1, CBD
[2] Article 6(1), Nagoya Protocol
[3] Article 2, CBD
[4] Ibid

the '*country supplying genetic resources collected from in-situ sources, including populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country'*.[5] Even if the fossil is from an extinct species the 'genetic resource' still originated within Anecoyon's borders thereby satisfying as an '*in-situ condition.*'

Ridus's extraction, sequencing, and use of the fossil DNA together with and the subsequent de-extinction process, constitutes utilization of genetic resources, which is subject to Anecoyon's prior informed consent.

**B. Prior Informed Consent did not exist as Ridus' actions fall outside 'scientific purposes' contemplated in the loan agreement**

Article 15(5) of the CBD[6] provides that *"access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources."* Prior informed consent can be defined as *'a unilateral administrative permit given by the Competent National Authority of the provider country.'*[7]

The Bonn Guidelines[8] state that:
*'The basic principles of a prior informed consent system should include: (a) Legal certainty and clarity'*

[5] Ibid
[6] Article 15(5), CBD
[7] Susette Biber-Klemm & Sylvia I. Martinez, Utilization of genetic resources and associated traditional knowledge in academic research: A good practice guide for access and benefit-sharing (2017)
[8] Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising Out of their Utilization, Decision VI/24, Conference of the Parties to the Convention on Biological Diversity, 19 April 2002, U.N. Doc. UNEP/CBD/COP/6/20, annex (2002).

Anecoyon stated that the purposes of providing the loan of the fossil was 'scientific research' and 'educational purposes'. The ICJ in Whaling in the Antarctic[9] identified that 'scientific purposes' must be interpreted narrowly. It stated that the involvement of disruption to ecology and the potential element of lethality prevented it from being purely for 'scientific purposes'. Ridus' purposes currently include 'de-extinction' which is both a novel use that carries significant ecological risks, as well as subsequently allowed for commercial use. This precludes Ridus' action from being interpreted as a scientific purpose.

The guidelines further state that:

*'Prior informed consent should be based on the specific uses for which consent has been granted. While prior informed consent may be granted initially for specific use(s), any change of use…[M]ay require a new application for prior informed consent. Permitted uses should be clearly stipulated and further prior informed consent for changes or unforeseen uses should be required'*[10]

De-extinction qualifies as a 'specific use' which necessitated a new application for prior informed consent under both the Nagoya Protocol and CBD. De-extinction technology emerged only years after the loan was executed and falls completely outside the scope of the original authorization. Ridus did not make such an application, and the compromis states that Anecoyon expressly forbade this specific use.[11]

The guidelines also specify that:

[9] Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), [2014] ICJ Rep 226
[10] Ibid para.34
[11] Ibid para.18

*'Permission to access genetic resources does not necessarily imply permission to use associated knowledge and vice versa'*[12]

The use of the knowledge for de-extinction is a 'use of knowledge' which requires additional permissions.

### C. The CBD and Nagoya Protocol Emphasize the necessity of Prior Consent and Mutually Agreed terms, especially in the case of Developing Nations

Article 12[13] reinforces the expectation that scientific research under the CBD must occur through cooperation and collaboration with developing countries, rather than unilateral action. As a developing country, Anecoyon's collaboration and consent in the matter is especially emphasized. Similarly Article 11 of the Nagoya Protocol[14] imposes a positive obligation on Parties to *endeavour to cooperate*[15] in circumstances involving shared genetic resources or associated traditional knowledge. This duty requires States to engage in communication, coordination, and reciprocal consultation before undertaking activities involving such resources. Ridus proceeded unilaterally with the de-extinction project, in disregard for the cooperative and in the absence of any attempt to obtain the authorization required under the Protocol.

Article 16(3)**[16]** further reinforces the PIC requirement by mandating that access to technology that uses a State's genetic resources must occur on "mutually agreed terms." De-extinction is a technological process within the CBD's definition of biotechnology, as Article 2[17] defines

[12] Ibid para.37
[13] Article 12, CBD
[14] Article 11, Nagoya Protocol
[15] Ibid
[16] Article 16(3), CBD
[17] Article 2, CBD

biotechnology as *"any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use."*

Ridus's reconstruction of the Royal Panther is such a technological application, requiring genome modification, synthetic biology techniques, and assisted reproductive technology. These technologies made use of Anecoyon's genetic resources. Article 16(3)[18] required that access and use be negotiated with Anecoyon on mutually agreed terms. Ridus did not seek such terms and therefore acted in breach of the Convention.

This interpretation is supported by authoritative scholarly commentary. Kuei-Jung Ni, writing in the *Vanderbilt Journal of Transnational Law* (2009)[19], affirms that PIC has become an established mechanism within international environmental law, incorporated into the CBD to regulate activities that pose risks to national environments. More critically, it emphasizes that unregulated exploration often causes damage to the territory being explored, and PIC functions as a safeguard against such unauthorized exploitation. This scholarly authority confirms that Ridus bore an obligation to seek Anecoyon's consent prior to any extraction or technological use of the fossil DNA.

[18] Ibid
[19]Jure Vidmar, International Legal Responses to Kosovo\'s Declaration of Independence, 42 VJTL 2009

## II. ANECOYON'S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS CONSISTENT WITH THE OBJECTIVES OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

### A. Anecoyon's Refusal to Consent Is a Lawful Exercise of Sovereign Rights and Fully Consistent with the CBD Framework

The IUCN Species Survival Commission defines *"de-extinction",* as *"the process of creating an organism that resembles an extinct species. The term "de-extinction" is misleading in its implication that extinct species, species for which no viable members remain, can be resurrected in their genetic, behavioural and physiological entirety".*[20]

The de-extinction initiative clearly constitutes "biotechnology" within the meaning of Article 2[21] of the CBD, *which includes all technological applications using biological systems or derivatives thereof to modify products or processes for specific use.* Ridus's reconstruction of the Royal Panther genome through synthetic biology and cell manipulation falls squarely within this definition, thereby triggering additional obligations under Articles 10(b)[22] to '*Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity'*; and Article 16(1)[23].

These provisions require that the utilization of biological resources avoid significant environmental harm and that technologies transferred or used must not cause environmental damage. Anecoyon's refusal to consent is based on established guidelines regarding the potential risks posed by the rewilding of extinct and possibly proxy species. The IUCN Species

[20] IUCN Species Survival Commission (SSC), IUCN SSC Guiding principles on creating proxies of extinct species for conservation benefit, version 1.0(2016)
[21] Article 2, CBD
[22] Article 10(b), CBD
[23] Article 16(1), CBD

Survival Commission's Guiding principles on creating proxies of extinct species for conservation benefit state:

*A proxy species, once placed in the wild, might have major undesirable and unforeseen impacts at its destination on other species or on ecosystem functions. The post-release performance and impacts of proxy species will be subject to risk and uncertainty arising from genetic and epigenetic factors, the influence of the rearing environment, and unpredictable interactions with biotic and abiotic elements following release into what will possibly be novel ecosystems.*[24]

Academic opinions from the Groningen Institute for Evolutionary Life Sciences state:

*Once a novel species is introduced to an environment, regardless of whether it was historically present or not, it may induce significant cascading changes in the ecosystem, highlighting the importance of intentional action. Unless a clear timeline and endpoint are determined, these changes risk being accentuated, leading to potential failure or even harm to the ecosystem.*[25]

**B. Application of precautionary principle to reduce environmental harm**

Anecoyon further grounds its position in the CBD's precautionary requirements in the preamble its it is noted that:

*"Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat."*[26]

[24] IUCN Species Survival Commission (SSC), IUCN SSC Guiding principles on creating proxies of extinct species for conservation benefit, version 1.0 (2016)
[25] *De-Extinction: Restoration or Destruction?* by Tolga Finn Kucuk, GELIFES
[26] Preamble, CBD

Article 14(1)[27] mandates environmental-impact assessment for proposed activities likely to affect biological diversity. Given that Ridus intended to breed a synthetically reconstructed organism with unknown ecological behavior, Anecoyon was compelled to apply the Precautionary Principle articulated in Principle 15 of the Rio Declaration[28]

*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*

The ICJ Advisory Opinion on Obligations of States in Respect of Climate Change (2025)[29] affirmed that the precautionary principle forms a binding part of contemporary international environmental law.

The precautionary principle requires that "*when an activity raises threats [to] the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established"* [30]

This principle has been reflected in the Decision CBD COP II/10 wherein it was stated that:

*"The work…[W]ill incorporate explicitly the precautionary approach in addressing conservation and sustainable use issues."*[31]

By withholding consent until environmental safety is established, Anecoyon discharged its duty of due diligence and acted consistently with the CBD's preventive obligations.

[27] Article 14(1), CBD
[28] Principle 15 - The Precautionary Approach, of the Rio Declaration
[29] ICJ, Legal Consequences of the Climate Change, para. 91–101 (July 23, 2025)
[30] Principle 15,Rio Declaration on environment and development
[31] Decision II/10, Conservation and sustainable use of marine and coastal biological diversity

### C. Reconciliation of sovereignty and Environmental protection under ICJ

The ICJ's reasoning in *Gabcíkovo–Nagymaros Project*[32] further reinforces Anecoyon's stance. The Court emphasized that environmental protection forms an integral component of treaty implementation and that newly evolved norms of environmental law must be given *"proper weight"* to reconcile technological progress with ecological safeguarding[33]. Anecoyon's refusal aligns with this jurisprudence: it balances potential scientific advancement against uncertain and potentially irreversible ecological harm. By doing so, it affirms the CBD's Article 1 objectives of conservation, sustainable use, and equitable benefit-sharing. Therefore, Anecoyon's refusal to consent is not a departure from the CBD, it is a direct fulfilment of the Convention's precautionary and sovereignty-based framework.

### D. De-Extinction Does Not Constitute Conservation under the CBD, and Anecoyon's Rejection Advances the Convention's Objectives

Anecoyon submits that de-extinction, as proposed by Ridus and conducted in partnership with Salols Co., does not qualify as conservation or sustainable use within the meaning of the CBD. The IUCN Guidelines on De-Extinction[34] (2016) clarify that no current technological pathway can recreate an extinct species; the most that can be achieved is the creation of a "functional equivalent." It further states:

*None of the current pathways will result in a faithful replica of any extinct species, due to genetic, epigenetic, behavioural, physiological, and other differences. Proxy is used here to*

[32] Gabčíkovo–Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. 7 (Sept. 25)
[33] Ibid,para 140-141
[34] IUCN. IUCN SSC Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit.(2016)

*mean a substitute that would represent in some sense (e.g. phenotypical ly, behaviourally, ecologically) another entity – the extinct form* [35]

This confirms that Ridus's "Royal Panther" is not a restoration of the extinct species but a synthetic organism constructed through genomic approximation.

As such, its creation cannot constitute "rehabilitation of ecosystems" under Article 8(f)[36] nor "environmentally sound use of biodiversity" under Article 10(b)[37]. By refusing consent, Anecoyon prevents the introduction of an unpredictable organism into ecological systems and upholds the CBD's commitment to avoiding activities that may undermine native biodiversity.

### E. Radius' Process of De-extinction contravenes international conservation standards

The IUCN Guidelines for Reintroductions and Other Conservation Translocations[38] require that any conservation translocation be justified by ecological necessity and accompanied by rigorous environmental-impact assessment. The Compromis confirms that Ridus undertook no such assessment, and that Salols Co., which carried out the genomic reconstruction, pursued technological and commercial aims unrelated to ecological restoration. Anecoyon's refusal ensures compliance with CBD Article 14[39] by preventing a high-risk intervention before its impacts are properly evaluated.

Anecoyon's position is consistent with global sustainable-development guidance. The UN ECOSOC Report on Implementation of Agenda 21 (1997, para. 66)[40] identifies the

[35] Ibid
[36] Article 8(f), CBD
[37] Article 10(b), CBD
[38] IUCN Species Survival Commission. Guidelines for reintroductions and other conservation translocations. Gland, Switzerland(2013).
[39] Article 14, CBD
[40] The UN ECOSOC Report on Implementation of Agenda 21 (1997, para. 66)

*"inappropriate introduction of foreign plants and animals"* as a major driver of biodiversity loss. A laboratory-created organism such as the reconstructed Royal Panther, with traits divergent from the original species, fits squarely within this category. By withholding consent, Anecoyon acts to prevent precisely the type of ecological disruption that Agenda 21 warns against.

Finally, Anecoyon's refusal aligns with IUCN concerns regarding "techno-fix" narratives. The IUCN De-Extinction Guidelines (2016, para. 11)[41] warn that proxy-species creation may undermine genuine conservation if portrayed as a technological substitute for preventing extinction. Ridus's promotional statements highlighted in Compromis , where the project is advertised as a "breakthrough in genomic innovation" demonstrate precisely this risk. By rejecting this narrative, Anecoyon protects funding, public attention, and institutional capacity for conservation of extant species, which the CBD prioritizes in Articles 1, 8, and 10.

## III. AS AN INITIAL MATTER, DSI USED FOR DE-EXTINCTION ACTIVITIES IS NOT "BIOTECHNOLOGY" FOR PURPOSES OF THE CBD AND THE NAGOYA PROTOCOL

Biotechnology has been defined under the Article 2 of the Convention on Biological Diversity (hereafter referred to as the "CBD") as a technological process that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.[42] Moreover, this definition is replicated in the Nagoya protocol[43].

Based on the reading of the entire convention, Article 19(1), 19 (2) and Article 2, Sub-Para 3 of the CBD indicate that 'biotechnology' is to be interpreted specifically on the basis of

[41] IUCN De-Extinction Guidelines (2016, para. 11)
[42] Article 2, CBD
[43] Article 2(d), Nagoya Protocol

biotechnologies based on genetic resources. Genetic resources are defined as *'genetic material of actual or potential value'*. Genetic Material is subsequently defined as *'any material of plant, animal, microbiological or other origin containing functional units of heredity.'*

DSI does not meet the requirements to be classified as 'genetic material' and is hence outside the scope of the definition of biotechnology as envisioned by the CBD and Nagoya Protocol.

### A. 'Genetic Materials' require tangibility, and materiality

Under Article 31(1) of the VCLT, *"a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*[44]*."*

According to the CBD, 'genetic resources,' 'genetic material,' 'derivative,' and 'biotechnology,' have all been defined in material terms. In ordinary interpretation, 'materiality' refers to the property of having physical existence and substance. This interpretation is supported by the Expert opinion on the applicability of the Convention on Biological Diversity and the Nagoya Protocol to digital sequence information[45].

The Ad Hoc technical expert group on digital sequence information on genetic resources[46] defines Digital Sequencing Information by reference to its components whereby '*Digital*' is defined as *'Of signals, information, or data: represented by a series of discrete values (commonly the numbers 0 and 1), typically for electronic storage or processing.'* This illustrates that the data is held intangibly as information, and does not exist in the material sense.

[44] Article 31, Vienna Convention on the Law of Treaties, 1969
[45] Spranger TM (2017) Expert opinion on the applicability of the Convention on Biological Diversity and the Nagoya Protocol to digital sequence information. Commissioned by the German Federal Ministry of Education and Research, Berlin.
[46] CBD/DSI/AHTEG/2020/1/3

This is supplemented by definition of 'sequencing' as *'the following of one thing after another in succession,'* additionally in the case of biochemistry *'The order of the constituent nucleotides in a nucleic acid molecule or of the amino-acids in a polypeptide or protein molecule.'* and 'information' which is defined as the '*That which is obtained by the processing of data*'.

Being purely informational, Digital Sequence Information lacks the tangibility to qualify as 'material,' and is hence not covered by the CBD or Nagoya Protocol.

### B. Genetic Material requires 'functional units of heredity' for the purposes of the CBD

Genetic material is only covered by the CBD if it possesses the characteristics of having a *'functional unit of heredity*[47]*.'*

Relying upon the Expert opinion on the applicability of the Convention on Biological Diversity and the Nagoya Protocol to digital sequence information[48] *'a hereditary unit is only given if it is of any such material that allows an inheritance to a subsequent organism'*. Based on ordinary interpretation, Digital sequence information cannot be transferred or inherited by an organism. It thereby fails to qualify as 'genetic material'.

Additionally, 'functional units of heredity' are defined as elements containing 'DNA' and, in some cases, RNA[49]. They have been interpreted as being full-coding genes, which are defined

[47] Article 2, CBD
[48] Ibid
[49] Glowka, L. et al., (1994). A Guide to the Convention on Biological Diversity. IUCN

by the presence of *'the nucleotides constituting a 'functional unit' on nucleic acids*[50].' In regards to extinct species, such codes can no longer be obtained through fossils.

### C. DSI cannot be considered a 'derivative' for the purposes of biotechnology in the case of de-extinction, as it concerns wholly new proteins that do not trace back to any genetic resource

The Nagoya Protocol Defines a 'derivative' as *'a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity'*[51]

This attaches the precondition of materiality for something to be classified as a 'derivative' as well, which DSI does not meet. Additionally a derivative must be 'naturally occurring,' which excludes artificial derivatives from the scope of the Protocol.

In the case of 'de-extinction' where the living organism is no longer available for study, and the use of technology such as CRISPR is employed to alter natural sequences and processes, the resulting DSI cannot be interpreted as being a naturally occurring 'derivative' of the original living organism.

According to the Expert opinion on the applicability of the Convention on Biological Diversity and the Nagoya Protocol to digital sequence information: *'Designer synthetic DNA sequences can generate wholly new proteins, and as these do not trace back to any genetic resource these do not fall within scope of any definition relating to DSI. Changes to nucleotides, such as modifying the base, sugar or phosphate may no longer be considered nucleotides.'*

[50] Fedder, B. (2013). Marine Genetic Resources, Access and Benefit Sharing: Legal and Biological Perspectives (1st ed.). Routledge.
[51] Article 2(e), Nagoya Protocol

According to the compromis[52], the Royal Panther was genetically engineered with CRISPR technology, combining the DSI of the Panther with that of the North American Cougar. This would qualify as a '*designer synthetic DNA sequence*' which ceases to serve as a 'derivative' of the original Royal Panther for the purposes of the definition of 'biotechnology'.

### D. State Practice has not warrant an evolutionary interpretation:

Beyond the Rule of Ordinary Interpretation, in *Namibia Legal Consequences*[53], the ICJ emphasized the 'the primary necessity of interpreting an instrument according to the intention of the parties at the time of its conclusion.'

At the time of the CBD's adoption, there was no intention of the parties to consider Digital Sequence Information as a genetic resource. There is also no uniform indication from states that such an intention has changed. Despite Article 29 of the CBD allowing for amendments to be made to the Treaty to allow for the removal of the materiality requirements, no such amendment has been made.

Furthermore for the ordinary meaning of a provision to evolve, state practice must reflect such an evolution. State practice from the European Union[54], Japan[55], Australia[56] have explicitly excluded DSI from being classified as 'genetic material'. Absent amendment, or uniform

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[52] Para 31, Compromis

[53] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) [1971] ICJ Rep 16

[54] 2.3.3, EU Guidance Document

[55] Chapter 1, article 3.1(1), Japan Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization 2017.

[56] Bagley M et al (2020) Fact-finding study on how domestic measures address benefit-sharing rising from commercial and non-commercial use of digital sequence information on genetic resources and address the use of digital sequence information on genetic resources for research and development. CBD, Ad Hoc Technical Working Group on Digital Sequence Information on Genetic Resources. Montreal, Canada.

practice that reflects an evolution in collective understanding to reform interpretation, the rule of ordinary interpretation must be applied.

## IV. THE SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 AND THE SIDNEY ANIMAL PARK IS ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR CURRENTLY LISTED IN CBD DECISION 16/2N

The DSI on Royal Panthers was made publicly available, in compliance with the national legislation by Ridus,[57] Therefore CBD Decision 16/2 necessitates the creation of a multilateral mechanism for fair and equitable benefit sharing for benefits arising out of the DSI.

In this regard, the Sidney Animal Park has operated as a "user" of the DSI by charging tickets for viewing the Royal Panthers,[58] Therefore Ridus is entitled to create a multilateral benefit sharing mechanism.[59]

### A. Sidney Animal Park qualifies as a "User" under the CBD Decision 16/2

The CBD Decision 16/2 in its Annex Paragraph 2 necessitates the creation of a multilateral benefit sharing mechanism, in a fair and equitable manner, derived by the "user" of the DSI of the Royal Panthers.[60] Moreover, CBD Decision 16/2 incorporates both direct and indirect sectors that derive benefit through commercial activities using the DSI by stating "*users of digital sequence information on genetic resources in sectors that directly or indirectly benefit from its use in their commercial activities should contribute a proportion of their profits or*

[57] Paragraph 28, Ibid
[58] Paragraph 34, Ibid
[59] Paragraph 16, Ibid
[60] Decision adopted by the Conference of the Parties to the Convention on Biological Diversity on 1 November 2024 16/2, Annex, Paragraph 2

*revenue to the global fund, according to their size"*.[61] It is argued that the Sidney Animal Park is an entity that derives revenue from the sale of tickets, thereby qualifying as an indirect sector.

The VCLT in Article 31(1) stipulates that international legal instruments like CBD Decision 16/2 and CBD itself must be interpreted in good faith in line with the text, context, objective and purpose of the treaties.[62] Therefore, the term "user" would be interpreted in light of the CBD's objective and purpose, which includes fair and equitable sharing of benefits derived from the utilization of genetic resources.[63] Only limiting "users" to those that physically manipulate the DSI would frustrate this objective of the CBD,[64] by allowing downstream actors that benefit from the DSI produced organisms, Ixchel and Itzamna. Sidney Animal Park derives an economic benefit, the charging of 40 USD ticket,[65] through the Royal Panthers, produced by the genetic manipulation of DSI by Salols Co.[66]

This denotes that the Park earns a significant revenue through the sale of tickets, which is invested in the expansion of breeding operations.[67] Therefore, a purposive interpretation of the CBD, reiterates that Sidney Animal Park indeed derives a benefit from DSI manipulated Panthers,[68] effectively qualifying as indirect "user".

[61] Ibid, Paragraph 3
[62] The Van Bokkelen v Haïti (1888) case, J. B. Moore, International Arbitrations, vol. II, p 1849, The Metzger and Co v Haïti (1900) case, J. B. Moore, Digest, vol. V, p 369
[63] Article 1, CBD
[64] Ibid
[65] Paragraph 34, Compromis
[66] Paragraph 31, Ibid
[67] Paragraph 35, Ibid
[68] Paragraph 31, Ibid

1. **Sidney Animal Park falls within the ambit of a "user" under International ABS Practice and UNCTAD**

The CBD Secretariat brochure on ABS reiterates that the "users" of genetic resources extend to botanical gardens,[69] thereby ex-situ conservationary entities fall within the ambit of ABS mechanism.[70] Sidney Animal park would constitute an ex-situ conservation institute as it has acquired DSI derived Panthers, exhibited in a zoo which is not their natural habitat. Furthermore, Sidney park is in the same functional category as botanical garden as it exhibits, cares for, and derives revenue from organisms produced through DSI on genetic resources.

Moreover, the UNCTAD document stipulates that *"Plants that are part of ex situ collections or animals that reside in zoos are examples of such genetic resources"*.[71] This expressly contemplates that Sidney Animal Park, exhibiting Royal Panthers, is an ex-situ entity, and thereby falls within the scope of ABS regime.

The IUCN Explanatory Guide to the Nagoya Protocol states that ABS obligations apply to all the actors that derive any benefit from genetic resources.[72] This framework extends to ex-situ facilities, notably zoos. The Sidney Animal Park generate revenue, through the sale of tickets to see Royal Panthers,[73] and reputational benefit from DSI manipulation centric Panthers.

[69] Convention on Biological Diversity: ABS Introduction to access and benefit-sharing, page 6
[70] The 2010 Nagoya Protocol on Access and Benefit-sharing in Perspective: Implications for International Law and Implementation Challenges, Morgera, Buck & Tsioumani 2014,
[71] The International Framework for Access and Benefit Sharing of Genetic Resources and Associated Traditional Knowledge, Page 17
[72] IUCN, Explanatory Guide to the Nagoya Protocol
[73] Paragraph 34, Comprimis

2. **Sidney Animal Park had relied upon the value created by the DSI, therefore qualifying as a "user"**

The Nagoya Protocol has defined "*utilization of genetic resources*" as *"research and development on the genetic and/or biochemical composition of genetic resources".*[74] However, the utilization of genetic resources is not limited to research and development. This is supplemented by ABS Good Practice Guide,[75] which reiterates that the "utilization" encompasses generation of economic or non-economic benefit from the genetic resource through breeding, reproduction etc. The UK ABS Guidance illustrates that the resources or value derived from ex-situ organisms, Royal Panthers, are within the scope of utilization of genetic resources.[76]

The Sidney Animal Park not only generates an economic value through commercial display by the sale of tickets to visit Ixchel and Itzamna,[77] but utilizes this revenue for captive breeding of other species.[78] Therefore the sustained accrual economic benefit, as the demand of customers is expected to stay constant,[79] supports continuing utilization. As it repeatedly derives economic benefits from the exhibition of Royal Panthers, this downstream revenue generation would qualify as "utilization" under ABS Guideline.

[74] Article 2(3), Nagoya Protocol
[75] ABS Good Practice Guide: Utilisation of Genetic Resources (CBD & Partner Agencies) (2016)
[76] Guidance on the UK Access and Benefit Sharing Regulations, DEFRA
[77] Paragraph 34, Compromis
[78] Paragraph 35, Ibid
[79] Ibid

### B. Sidney Animal Park's activities are commercial in nature

#### 1. Sidney Animal Park satisfies the Revenue threshold under CBD Decision 16/2

The CBD Decision 16/2 have set a criteria for contribution to the Cali fund whereby entities that, satisfy two out of three thresholds either have total assets worth 20 million USD, sales of 50 USD, or profit of  5 million USD, averaged over the last three years are required to contribute to the Cali fund at an indicative rate.[80]

It's noteworthy that Sidney Animal Park conforms to the stipulated parameters. Ridus itself has contended, and has agreed not to contest, that Park possess assets exceeding 20 million USD and the annual sales around 130 million USD.[81] This underpins that Sidney Animal Park, as an entity, meets the requirements by fulfilling two out of three thresholds. Thus, the park adheres to the numeric scopes of Annex 3,[82] thereby its firmly placed within the class of entities that COP pins as contributors.

#### 2. Sidney Animal Park derives economic benefit from a biotech product

Even though, the park itself is not involved in the manipulation of the DSI extracted from the Royal Panthers,[83] and application of the CRISPR technology.[84] The fact that it cares for, exhibits and monetises a product of biotechnology.[85] This underpins that the Park has commercialised an organism that is derived from biotechnology.

This downstream commercialisation of Ixhcel and Itzamna, biotech products, would be deemed

[80] Decision adopted by the Conference of the Parties to the Convention on Biological Diversity on 1 November 2024 16/2. Annex 3
[81] Paragraph 45, Compromis
[82] Decision adopted by the Conference of the Parties to the Convention on Biological Diversity on 1 November 2024 16/2. Annex 3
[83] Paragraph 16, Compromis
[84] Paragraph 32, Ibid
[85] Paragraph 34, Ibid

as generating a benefit from the DSI manipulated biotech organisms. Moreover, the park carries out captive breeding programs for other species with the revenue that is generated from the exhibition of the biotech-derived panthers.[86] This would fall within the Enclosure I, Article 1(d) as this actively would fall within the defined scope of "animal and plant breeding" category. The identification of whether an organization qualifies as a commercial entity is rooted in its substance and not form,[87] Therefore monetisation of biotechnology products through exhibition,[88] and use of DSI derived revenue in breeding programs renders the activities of the park as commercial for the purposes of CBD Decision 16/2.

### 3. Sidney Animal Park falls within the ambit of a commercial entity under Purposive interpretation of the CBD Decision 16/2

The architecture and textual formation of the CBD Decision 16/2 illustrates that the COP intended to create a multilateral benefit sharing mechanism to avoid derivation of economic gain from utilization of DSI manipulated products without fair and equitable sharing. This has been articulated in Annex 2,[89] Annex 3 which encompasses indirect users of the DSI to share benefits arising from its use,[90] and Annex 13 which reiterates the obligation of contributing to the Global fund.[91] This iterates that the semantic content focuses on downstream revenue generation from DSI utilization as well, which is precisely derived by Sidney Animal Park.[92]

[86] Ibid
[87] Decision adopted by the Conference of the Parties to the Convention on Biological Diversity on 1 November 2024 16/2. Annex 3
[88] Paragraph 34, Compromis
[89] Decision adopted by the Conference of the Parties to the Convention on Biological Diversity on 1 November 2024 16/2. Annex 2
[90] Ibid, Annex 3
[91] Ibid, Annex 13
[92] Paragraph 34, Compromis

The Park has commercialised the Royal Panther through the sale of tickets for 40 USD,[93] which is precisely downstream economic benefit from DSI derived organisms. Even though the revenue reinvested into conservationary activities does not negate the commercial centric nature of these activities.[94] Under a teleological approach under VCLT Article 31,[95] it became clear that COP intended to avoid entities from deriving value from DSI without sharing the benefits under a multilateral mechanism.

[93] Ibid
[94] Paragraph 35, Ibid
[95] Article 31(1), VCLT

## CONCLUSION AND PRAYER FOR RELIEF

The Applicants, Anecoyon, respectfully request the Court to adjudge and declare that:

I. That Ridus' conduct breached the Prior Informed Consent provisions of the CBD and Nagoya Protocol,

II. That Anacoyon's refusal to consent based on its objections on the basis of potential ecological harm to de-extinction are consistent with the objectives of the CBD,

III. Digital sequence information used for de-extinction of Royal Panthers qualify as "biotechnology" within the scope of Article 2 of the CBD, as it revolves around technological applications that use derivatives for the specific purpose of reintroducing Panthers,

IV. Sidney Animal Park falls within the meaning attached with the user, and the activities it partake constitute commercial in nature.

**Respectfully Submitted,**

**Agents of Applicant**