Team No. 35A

STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION,

2025-2026

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

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

GENERAL LIST NO. 303,

YEAR 2025

ANECOYON

(APPLICANT)

V.

RIDUS

(RESPONDENT)

-WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT-

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TABLE OF ABBREVIATIONS

No.	Abbreviation	Full Form
1	ABS	Access and Benefit-Sharing
2	Art.	Article
3	CBD	Convention on Biological Diversity
4	CDV	Canine Distemper Virus
5	Ch.	Chapter
6	Co.	Company
7	COP	Conference of the Parties
8	COP16/NP-MOP5	The sixteenth meeting of the Conference of the Parties to the Convention on Biological Diversity (COP 16) and the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (NP-MOP 5)
9	CPV	Canine Parvovirus
10	CRISPR	Clustered Regularly Interspaced Short Palindromic Repeats
11	DSI	Digital Sequence Information

12	ICJ	International Court of Justice
13	ICRW	International Convention for the Regulation of Whaling
14	JARPA	Japanese Whale Research Programme under Special Permit in the Antarctic
15	MAT	Mutually Agreed Terms
16	Nagoya Protocol	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing Benefits Arising from their Utilization
17	Para.	Paragraph
18	PIC	Prior Informed Consent
19	Pmbl.	Preamble
20	Princ.	Principle
21	SSC	Species Survival Commission
22	S.v.	Sub Verbo
23	UNCITRAL	United Nations Commission on International Trade Law
24	UNEP	United Nations Environment Programme
25	USD	United States Dollar
26	Vol.	Volume
27	¶	Paragraph (used only for Record references)

QUESTIONS PRESENTED

[I] Regarding **prior informed consent**:

A. 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

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

[II] Regarding **benefit-sharing**:

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

B. 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 of the Statute of the International Court of Justice (ICJ), Anecoyon and Ridus submitted to the ICJ by Special Agreement, questions concerning their differences relating to prior informed consent and benefit- sharing arising out of the de-extinction of the Royal Panther, as set forth in Annex A, including the Clarifications. The Registrar of the Court acknowledged receipt of this joint notification on 14 July 2025.

Anecoyon and Ridus have accepted the jurisdiction of the ICJ pursuant to Article 36(1) of the Statute and request this Honorable Court to adjudge these disputes in accordance with the rules and principles of international law, including any applicable treaties.

The parties have agreed to accept the Judgment of the Court as final and binding upon them and shall faithfully execute it in its entirety.

STATEMENT OF FACTS

The Panthera are Indigenous to the Passager Peninsula. In 1648, the Kingdom of Mammuthus colonized the area and created Anecoyon and Ridus **(R ¶ 1)**. In 1914, they became independent states, and they remain neighboring sovereign states separated by the Incillius River **(R ¶ 2)**. Anecoyon is a lower-middle income country, while Ridus is a high-income country **(R ¶¶ 3–4)**. Due to adverse historical circumstances, small communities of the Panthera now live only in Ridus **(R ¶ 5)**. The Royal Panther (*Puma royali*) once inhabited the territories of both Anecoyon and Ridus **(R ¶ 6)**. It went extinct 6,000 years ago, likely due to overhunting by the Blytheae, the confirmed ancestors of the Panthera **(R ¶ 7)**.

Anecoyon and Ridus are Parties to the Vienna Convention on the Law of Treaties **(R ¶ 9)**. Both States have been Parties to the CBD since 1993 **(R ¶ 10)**. They also have been Parties to Nagoya Protocol since 2015 **(R ¶ 11)**. At COP16/NP-MOP5, Anecoyon and Ridus issued individual statements regarding CBD Decision 16/2, titled "Digital sequence information on genetic resources" **(R ¶¶ 12–13)**.

In September 1901, the best-preserved fossil of the Royal Panther was discovered in the Kingdom of Mammuthus in the province of Anecoyon. Later, in 2009, Anecoyon loaned the fossil of the Royal Panther to Ridus for the purposes of education and scientific research **(R ¶ 15)**. On 16 September 2022, Ridus announced that it had extracted DNA from the Panther fossil and intended to do the "de-extinction" for reintroducing the panthers in protected areas in Ridus **(R ¶ 16)**.

On 27 September 2022, Anecoyon formally expressed its concerns to Ridus regarding the

de-extinction project **(R ¶ 18)**. After negotiations between Anecoyon and Ridus, in December 2023, Anecoyon enacted national legislation prohibiting the use of any genetic resources from its territory, or any derivative thereof, for purposes of de-extinction, and demanded the fossil's return and the abandonment of the de-extinction project **(R ¶ 24)**.

Ridus returned the fossil to Anecoyon but proceeded with the project **(R ¶¶ 27–28)**. Then, Ridus contracted with a private company, Salols Co., which created two panthers using CRISPR in December 2024 **(R ¶¶ 29, 31)**. Under Ridus's domestic law, the panthers are the property of the state. Regarding them, there is a disagreement between the two Parties as to whether they are Royal Panthers **(R ¶ 32)**. The panthers are being raised in the Sidney Animal Park, a major tourist site in Ridus **(R ¶ 33)**. The park charges an additional fee of USD 40 to view the panthers, while Panthera members are exempted **(R ¶ 34)**. The revenue is used for their care and conservation **(R ¶ 35)**. Ridus plans to reintroduce future generations into a protected area as part of a rewilding project, with eco-tourism operated by Panthera members **(R ¶ 36)**.

Regarding this, Anecoyon called on Ridus to require the Sidney Animal Park to contribute 0.1 per cent of its annual revenue to the Cali Fund under the CBD Decision 16/2 **(R ¶ 38)**. Ridus agreed to facilitate benefit-sharing to the Cali Fund in accordance with CBD Decision 16/2 if an international tribunal determines that the Park is a user of DSI on genetic resources and that the Park is a commercial activity covered by a sector currently listed in CBD Decision 16/2. It also agreed not to contest that the Sidney Animal Park's financial thresholds for benefit-sharing are met **(R ¶¶ 44–45)**. After negotiations between Anecoyon and Ridus, the Parties ultimately agreed to submit their dispute to the International Court of Justice **(R ¶¶ 46–47)**.

SUMMARY OF ARGUMENT

1. Prior Informed Consent (PIC)

First, when Ridus proceeded with its de-extinction project without obtaining a PIC from Anecoyon, Ridus violated CBD Article 15(5) and Nagoya Protocol Article 6(1). CBD Article 15(5) and Nagoya Protocol Article 6(1) require the PIC of the Party providing genetic resources. Ridus acquired DSI for its de-extinction project from DNA extracted from a fossil loaned by Anecoyon "for the purposes of education and scientific research." But the consent in the loan agreement for "scientific research" did not contemplate a novel use such as the de-extinction project. Therefore, Ridus's use in the de-extinction project of Anecoyon's fossil or derivatives from it lacked valid PIC. In conclusion, Ridus's use of DSI in its de-extinction project, without PIC from Anecoyon for the use of genetic resources, violated the CBD and the Nagoya Protocol.

Second, Anecoyon's refusal to consent, subsequently embodied in its national legislation prohibiting the use of Anecoyon's genetic resources or any derivatives for de-extinction accords with CBD's objectives. CBD Article 1 sets out the CBD's objectives, including conservation of biodiversity, sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Anecoyon's refusal of consent accords with these objectives for several reasons. First, de-extinction does not contribute to the conservation of biological diversity given that all the CBD's references to species contemplate extant species. Second, CBD Article 15(2) only refers to providing access to genetic resources for "environmentally sound uses", but the de-extinction project is not an environmentally sound use. Third, Anecoyon acted consistently with the Precautionary Principle, by enacting the national legislation. Lastly, the measure of Anecoyon is a legitimate exercise of its sovereign rights. In addition, such actions encourage continued destruction of habitat based on the false hope that

species can be resurrected. Accordingly, the refusal of Anecoyon accords with CBD's objectives. Therefore, Ridus did not acquire valid PIC from Anecoyon.

2. Access and Benefit-Sharing (ABS)

First, DSI used for the de-extinction activities is "biotechnology" for purposes of the CBD and the Nagoya Protocol. CBD Article 2 defines 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 utilized DSI to reconstruct two panthers for de-extinction and exhibited them while generating profits, which demonstrates that the panthers are treated as products. Therefore, DSI used for the de-extinction activities constitutes "biotechnology".

Second, Sidney Animal Park is a user of DSI on genetic resources for purposes of CBD Decision 16/2. According to CBD Decision 16/2 Annex Articles 2 and 3, direct or indirect users of digital sequence information on genetic resources under the multilateral mechanism should share benefits arising from its use in a fair and equitable manner. Two panthers are created from the DSI, and Sidney Animal Park has ultimately commercialized the outcome of DSI by charging an additional fee to visitors for the observation of panthers. In conclusion, Sidney Animal Park is a user of DSI on genetic resources for purposes of the CBD and the Nagoya Protocol.

Third, Sidney Animal Park is engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2. CBD Decision 16/2 Enclosure I (1)(d) prescribes animal breeding as a commercial activity. The Park is already breeding the panthers in a controlled environment and planning captive breeding of other species with extra funds from the panthers. Under CBD Decision 16/2 Enclosure I (1)(e), biotechnology is one of the sectors that may benefit directly or indirectly from the use of DSI on genetic resources. And Sidney Animal Park generates profits by indirectly using the two panthers created through biotechnology. Even if those panthers are not

considered the biotechnological outcomes of DSI, Ridus is still obligated to require Sidney Animal Park to contribute to the Cali Fund under CBD Decision 16/2 Annex 1(b) and the Principles of Good Faith and Estoppel. Accordingly, it participates in commercial activity covered by a sector currently listed in CBD Decision 16/2. In conclusion, Ridus must urge Sidney Animal Park to contribute to the Cali Fund under CBD Decision 16/2.

ARGUMENTS ADVANCED

I. RIDUS'S DE-EXTINCTION PROJECT VIOLATED THE PRIOR INFORMED CONSENT[1] PROVISIONS OF THE CBD AND THE NAGOYA PROTOCOL.

A. Ridus Violated the PIC provisions.

CBD Article 15(5) provides, "access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party."[2] Likewise, Nagoya Protocol Article 6(1) requires, "access to genetic resources for their utilization be subject to the prior informed consent of the Party which provides such resources."[3] Both provisions impose PIC obligations for access to genetic resources. PIC means that permission from the authorities of the provider country must be obtained in accordance with national legislation before access.[4]

PIC governs access to "genetic resources", which are defined as "genetic material of actual or potential value."[5] "Genetic material" is "any material of plant, animal, microbial or other origin containing functional units of heredity."[6] The term "functional units of heredity" refers to entities that carry and express hereditary information.[7] DNA is organized into genes, which carry biological information that must be copied accurately for transmission to the next generation.[8] Notably, no articles of CBD limits "genetic material" to living organisms. Thus, DNA contains

[1] Prior Informed Consent, hereinafter, PIC
[2] CBD art. 15(5).
[3] Nagoya Protocol art. 6(1).
[4] Frequently Asked Questions on Access and Benefit-Sharing (ABS), CBD, at 1.
[5] CBD art. 2 para. 10.
[6] CBD art. 2 para. 9.
[7] Peter Johan Schei & Morten Walløe Tvedt, *'Genetic Resources' in the CBD: The Wording, the Past, the Present and the Future* (FNI Rep. 4/2010, Fridtjof Nansen Inst. 2010), at 2–3.
[8] Bruce Alberts et al., Molecular Biology of the Cell (7th ed., Garland Science 2022), ch. 1; "Molecules, Cells, and Evolution,", at 4–10.

functional units of heredity[9] and therefore is genetic material.

In this case, Ridus extracted DNA from the Royal Panther's fossil borrowed from Anecoyon and from it generated DSI for its de-extinction project.[10] This demonstrates the fossil's actual value, as it has been effectively utilized through contemporary techniques for de-extinction. Simultaneously, in light of Ridus's planning to implement further activities[11] with the fossil and derivatives, it has potential value that may be realized or enhanced through new techniques in the future.[12] Accordingly, as genetic material of actual and potential value, the loaned fossil is a genetic resource.

Because the Royal Panther's fossil is a genetic resource, access to or utilization of it requires PIC from Anecoyon. As will be shown next, PIC must be specific, not general, and PIC for "scientific research" before the invention of DSI cannot include DSI. However, Anecoyon never granted permission to Ridus to use the fossil, DNA, or DSI *for de-extinction purposes*, in accordance with national legislation. Therefore, Ridus failed to acquire PIC from Anecoyon for de-extinction.[13]

B. The Terms of the Loan Agreement Cannot Constitute PIC for the De-extinction Project, since De-extinction is Not Scientific Research.

1. Ridus's de-extinction is a novel use.

De-extinction is a branch of synthetic biology, involving the *de novo* synthesis of genetic

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[9] Genetic Alliance & NYMAC, *Understanding Genetics: A New York, Mid-Atlantic Guide for Patients & Health Professionals* (Genetic Alliance 2009), ch. 1, at 6.
[10] Record ¶16.
[11] Record ¶¶ 19, 36.
[12] *See* supra note 7, at 3–4. (explaining that "potential value" refers to value that future techniques may realize in the functional units of heredity and thus adds a dynamic aspect to the definition).
[13] Record ¶ 22.

material and an engineering-based approach to developing components, organisms and products. Synthetic biology is the re-design of existing, natural biological systems for useful purposes.[14] CBD COP 13 Decision XIII/17 (2016) paragraph 4 reaffirmed that synthetic biology is "a further development and new dimension of modern biotechnology."[15] As a *new dimension*, synthetic biology is fundamentally different from conventional biotechnology: its capability to engineer and redesign living organisms separates synthetic biology from simple biotechnology, establishing itself as a *distinct and engineered framework for life.*[16]

Here, Ridus's de-extinction project is an application of synthetic biology, since it employed *de novo* genome synthesis, DSI, and CRISPR-based engineering to redesign the genetic composition of an extant species, thereby recreating traits of an extinct one. Such technological application constitutes a "new dimension of modern biotechnology,"[17] as it merges scientific knowledge and engineering design to modify and reconstruct living systems for specific biotechnological purposes. Accordingly, this falls outside the scope of Anecoyon's original consent, which consented to scientific research in 2009.

The loan agreement was concluded in 2009,[18] whereas discussions about DSI under CBD first began at CBD COP 13 Decision XIII/16 (2016).[19] At the time of the loan, Anecoyon could neither have considered the emergence of DSI nor foreseen its later application to a novel use such as de-extinction, an activity that requires DSI. Because Ridus's de-extinction could not have been reasonably expected in 2009, it constitutes an unexpected novel biotechnological use, for

[14] Secretariat of the Convention on Biological Diversity, *Synthetic Biology*, CBD Technical Series No. 82 (2015), at 13.
[15] CBD/COP/DEC/XIII/17: *Synthetic Biology* (Dec. 16, 2016), para. 4.
[16] *Id*.
[17] i.e., synthetic biology recognized by CBD/COP/DEC/XIII/17
[18] Record ¶ 15.
[19] CBD/COP/DEC/XIII/16.

which Ridus failed to obtain PIC under CBD Article 15(5).

2. Ridus's de-extinction is an unreasonable use for purposes of scientific research.

In *Whaling in the Antarctic (Australia/Japan),*[20] ICJ held that a State's mere assertion that an activity constitutes scientific research cannot be taken at face value.[21] Rather, the Court concluded that, whether the project's design and implementation are reasonable in light of its stated scientific purpose, must be objectively assessed.[22] The Court noted the *substance* of the activity rather than its form. Also, the Court considered whether numerous factors including the project's scale, ethical considerations, and coordination with related research, reasonably correspond to its stated scientific objectives. On that basis, the Court examined whether Japan's JARPA II programme, involving large-scale whale killings, was genuinely "for purposes of scientific research," by evaluating whether its design and implementation reasonably matched its stated scientific objectives.

The same rationale applies to this case, since Ridus justifies its de-extinction project under the loan agreement as "scientific research". Serious doubts arise about the project's integrity as scientific research with regard to its scale, ethical implications, and lack of coordination with related scientific projects. Under the Court's standard, Ridus's de-extinction project is not "scientific research", because its design and implementation are unreasonable when considered as a whole.

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[20] *Whaling in the Antarctic (Austl. v. Japan: N.Z. intervening),* Judgment, 2014 ICJ. 226 *(Mar. 31)* (Australia brought a case to ICJ against Japan, alleging that Japan's JARPA II programme has breached the International Convention for the Regulation of Whaling (ICRW). The Court found that the programme and its implementation were unreasonable for its stated scientific purposes, ruling the permits invalid under Article III of ICRW and ordering Japan to end the programme.)
[21] *Id.* at 228.
[22] *Id*. at 36–38.

First, Ridus's de-extinction project is a large-scale biotechnological operation. Here, third-participants, such as Salols Co. and Sidney Animal Park are engaged in the project and commit diverse activities ranging from genetic editing to rewilding plans. Salols Co. modified 15 genes of DSI of cougar cells as much as 20 times using CRISPR[23] technology and recreated two Panthers. Sidney Animal Park is exhibiting the panthers and charging visitors to observe them and even plans to use extra fees for the other animals' captive breeding.[24] Such extensive activities demonstrate that the project oversteps basic scientific research.

Second, the use of CRISPR technology by Salols Co., raises serious ethical issues, on the aspect of animals' welfare, especially that of the surrogate cougar. In cloning, host mothers face grave suffering, largely due to inordinately high rates of spontaneous abortions.[25] The method adopted by Ridus is analogous to such cloning practices, where the surrogate Cougar was used as a biological instrument for the implantation of genetically modified DSI, exposing it to physical and psychological risk. One successful instance of cloning does not remove the ethical concerns inherent in using a living animal as a biological instrument.

Lastly, programme's coordination with related research projects is unduly low. Although Ridus carried out large-scale resource investment and genetic manipulation, there are no empirical results of the de-extinction project, demonstrating the biological impact or contribution to conservation of biological diversity.

Together, these factors show that Ridus's de-extinction project is an unreasonable use for scientific research. Therefore, the PIC that Ridus asserts it obtained under the loan agreement is

[23] Clustered Regularly Interspaced Short Palindromic Repeats, hereinafter, CRISPR
[24] Record ¶¶ 31–36.
[25] Center for Food Safety, Cloning and Animal Welfare, https://www.centerforfoodsafety.org/issues/302/animal-cloning/animal-welfare-258 (last visited Oct. 26, 2025).

not valid.

C. Anecoyon's National Legislation, Based on Refusing the Use of Its Genetic Resources "for the purpose of de-extinction", Accords with the CBD's Objectives.

1. De-extinction does not contribute to conservation of biological diversity under the CBD.

Pursuant to the general rule of interpretation, "a treaty shall be interpreted in good faith in accordance with the ordinary meaning of its terms, in their context, and in light of its object and purpose."[26] In this regard, Article 1 of the CBD identifies "the conservation of biological diversity" as one of its primary objectives,[27] which serves as the interpretative context for the Convention as a whole. The ordinary meaning of "conservation" is the "preservation of life, [...], existing conditions, [...], order."[28] This definition inherently presupposes the existence of living subjects being preserved.

Thus, for the CBD's references to "species", including "threatened species" or "endangered species", the Convention concerns *extant* species capable of protection through conservational efforts. Moreover, CBD Article 2 defines "biological diversity" as "the variability among living organisms from all sources including [...] the ecological complexes of which they are part, and this includes diversity within species, between species and of ecosystems."[29] This further confirms that the CBD's conservation obligations are directed toward the preservation of existing species, rather than the artificial resurrection of species that have already disappeared in nature. Here, the Royal Panther is an extinct species and therefore falls outside the scope of

[26] VCLT art. 31(1).
[27] *Id. pmbl.*, para. 3.
[28] *Oxford English Dictionary*, s.v. "conservation," https://doi.org/10.1093/OED/1178659571 (last visited Nov. 9, 2025).
[29] CBD art. 2.

"species" under CBD's conservation framework.

Accordingly, the Royal Panther is not subject to conservation or restoration obligations under CBD.

2. De-extinction is not an "environmentally sound use" under the CBD.

CBD Article 15(2) provides, "each Contracting Party shall endeavor to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention." It limits access to genetic resources to "environmentally sound use". As the term "sound" refers to "not harmful or wrong"[30], "environmentally sound use" is as a utilization of genetic resources in a manner that is not harmful to the environment, ensuring the protection and conserving the biological diversity against adverse human activity.[31]

De-extinction, however, is not an "environmentally sound use". Re-introducing a long-extinct species into a modern ecosystem carries unpredictable ecological risks. De-extinct animals may exhibit characteristics similar to invasive species, broadly impact ecosystems, and increase wildlife disease risks.[32] We see this when extant species are reintroduced into environments from which they had disappeared. One example is the gray wolf in Yellowstone National Park,[33] where the unmanaged wolf population steadily increased in density, causing a

[30] *Cambridge English Dictionary*, s.v. "sound," https://dictionary.cambridge.org/dictionary/english/sound (last visited Nov. 9, 2025).
[31] VCLT art. 31(1).
[32] Rene X. Valdez et al., "Anticipating Risks, Governance Needs, and Public Perceptions of De-Extinction," 6 J. Responsible Innov. 211, 216 (2019). Jessica Allen et al., "De-Extinction, Regulation and Nature Conservation," 32 J. Envtl. L. 309, 312–16 (2020).
[33] Carter C. Niemeyer, "The Good, Bad and Ugly, Depending on Your Perspective," in *Transactions of the 72nd North American Wildlife and Natural Resources Conference* 287 (Wildlife Mgmt. Inst. 2007) (reporting elk populations declined from approximately 19,359 in 1993–1994 to 6,738 in 2006–2007, at 290).

sharp decline in elk numbers and producing susceptibility to infection in the wolf population.[34] The reintroduction of the Tasmanian devil similarly shows issues related to disease transmission and harm to other species.[35] If reintroducing recently-disappeared extant species causes such problems, then reintroducing species extinct for thousands of years will likely cause even worse problems.

Such risks are amplified when the species in question has been extinct for millennia, since the environmental context into which it is released has fundamentally changed. This arises because de-extinction does not recreate the original species, but produces genetically distinct substitutes. In these circumstances, de-extinction does not truly recreate the original species but rather reconstructs a proxy, a substitute which is distinguished from a facsimile which implies creation of an exact copy.[36] Current pathways cannot fully replicate the offspring that would have resulted from natural mating of the species before extinction. Instead, they produce genetically distinct proxies that function as novel entities within altered environments. The release of such proxies "long absent or never present in an area" carries risks of ecological disruption and disease transmission as their interactions with modern ecosystems remain unpredictable. This poses a far greater risk than ordinary reintroductions.[37]

Here, the re-created Royal Panther is a species that has been extinct for approximately

[34] Emily S. Almberg Paul C. Cross, Andrew P. Dobson, Douglas W. Smith & Peter J. Hudson, *Parasite invasion following host reintroduction: A case study of Yellowstone's wolves*, 367 Phil. Trans. R. Soc. B 2840, 2840–41 (2012) (reporting infections including canine parvovirus (CPV), canine distemper virus (CDV), and sarcoptic mange).
[35] National Geographic, *Tasmanian Devils Return to Mainland Australia for First Time in 3,000 Years*, https://www.nationalgeographic.com/animals/article/tasmanian-devils-return-to-mainland-australia (last visited Nov. 4, 2025) (noting that in 2012, an introduced population of devils on Maria Island led to the disappearance of several short-tailed shearwater colonies).
[36] IUCN Species Survival Commission (SSC), *Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit* version 1.0 (Gland, Switz.: IUCN 2016), at 1.
[37] *Id.* at 8–9.

6,000 years[38] and therefore qualifies as such a proxy species. Its de-extinction entails substantial ecological and genomic differences from its original form.[39] This demonstrates that the Royal Panther as a proxy species also raises the accompanying environmental hazards. Therefore, Ridus's de-extinction project is not an 'environmentally sound use' under the CBD.

Furthermore, de-extinction raises ethical issues in two respects: [1] deadly animal welfare harms, and [2] moral hazards. First, at every stage, from implantation, captive rearing, and to reintroduction, it inflicts suffering on animals. With the risks on surrogate mothers,[40] cloned or engineered offspring also frequently suffer from chronic abnormalities and early death. Moreover, in captivity, de-extinct animals may experience stress, poor adaptation, and social deprivation. Even after release, their low survival rates deepen the ethical controversy.[41] Second, the prospect of de-extinction creates a moral hazard, fostering the belief that extinct species can always be revived by future generations. This perception undermines present conservation efforts and weakens social and political will to prevent further extinctions, shifting the burden of ecological consequence to future generations.[42] This leads to a reduction in conservation efforts aimed at protecting endangered species.[43]

Therefore, given de-extinction's risks and uncertainties, Ridus's de-extinction project is not an "environmentally sound use."

3. Anecoyon's national legislation accords with the Rio Declaration's

[38] Record ¶ 7.
[39] Beth Shapiro, *Pathways to de-extinction: how close can we get to resurrection of an extinct species?*, 31 Funct. Ecol. 996, 996–1002 (2017).
[40] *See* supra note 25.
[41] Ashley Shipley, *De-Extinction: The Good, the Bad, and the Unknown*, *The Song of Life* (Nov.1,2024),https://www.the-song-of-life.com/essays/2131849_de-extinction-the-good-the- bad-and-the-unknown-2-3, at 18–19 (2024).
[42] *See* supra note 36, at 3.
[43] *See* supra note 41, at 15–16.

Precautionary Principle.

The Precautionary Principle, articulated in the preamble of CBD and in Principle 15 of the Rio Declaration, provides that, given a threat of serious or irreversible environmental damage, a lack of scientific certainty is no excuse to postpone actions that could prevent that damage.[44] And CBD Decision XII/24, "[u]rges Parties and invites other Governments to take a precautionary approach" specifically in the context of synthetic biology.[45] And the Cartagena Protocol Article 1 builds upon Rio Declaration Principle 15, emphasizing the objective to ensure adequate "protection in the safe transfer, handling, and use of living modified organisms, specifically focusing on transboundary movements." That is, given a threat of environmental damage, Parties should act to prevent that damage, also in contexts of synthetic biology like de-extinction.

In *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*,[46] ICJ recognized that the Parties agreed on the need to take environmental concerns seriously and to take required precautionary measures.[47] Accordingly, "in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage."[48]

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[44] Rio Declaration on Environment and Development, princ. 15 (1992); see also Erin Okuno, *Frankenstein's Mammoth: Anticipating the Global Legal Framework for De-Extinction*, 43 Ecology L.Q. 581, 621 (2016); U.N. Env't Programme, *Training Manual on International Environmental Law* ch. 3, para. 44 (2006) (stating that "the precautionary principle is essential to protecting the environment (including human health)").

[45] Erin Okuno, *Frankenstein's Mammoth: Anticipating the Global Legal Framework for De-Extinction*, 43 Ecology L.Q. 581, 624 (2016).

[46] *Gabčíkovo–Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ. 7 (Sept. 25); Hungary and Slovakia disputed the Gabčíkovo-Nagymaros Project. The ICJ observed that both States had acted unlawfully under the 1977 Treaty (Torrijos–Carter): Hungary by suspending works, and Slovakia by unilaterally operating the dam. The Court ordered both States of mutual compensation and good-faith negotiations for the implementation of the Treaty.

[47] *Id.* at 68. para. 113.

[48] *Id.* at 78. para. 140.

Anecoyon's national legislation, prohibiting de-extinction projects, constitutes *precautionary action* that implements the Court's emphasis on preventing harm and satisfies the several treaties' emphasis on the Precautionary Principle.

We have already shown that de-extinction projects threaten real harms to the environment. Given these threats, Anecoyon refuses to be a part of the potential problem until scientific certainty declares such projects safe. Anecoyon's national legislation avoided postponing measures to prevent environmental degradation and prevents risks to the environment and living organisms, in accord with the Precautionary Principle and the Court's concerns.

Therefore, Anecoyon's national legislation accords with the Precautionary Principle.

4. Anecoyon's national legislation is a legitimate exercise of its sovereign rights.

Under the CBD, States have sovereign rights over their natural resources, and the authority to determine access to genetic resources rests with the national governments, in accordance with their domestic legislation.[49] Sovereign rights over natural resources include the authority to control, permit, or deny access to genetic materials within a state's jurisdiction. Furthermore, CBD provides that access to genetic resources shall be subject to PIC of the Contracting Party providing such resources.[50]

In this case, Anecoyon's national legislation is a legitimate measure regarding environmental safety and ethical risks arising from the de-extinction project. Accordingly, Anecoyon lawfully exercised its discretion in refusing access to its genetic resources, with a power presupposed under CBD Article 15. Therefore, Anecoyon's national legislation is a legitimate

[49] CBD art.15(1).
[50] CBD art.15(5).

exercise of its sovereign rights.

In light of the foregoing, Ridus violated the PIC provisions under the CBD and the Nagoya Protocol for its de-extinction project.

II. RIDUS MUST URGE SIDNEY ANIMAL PARK TO CONTRIBUTE TO THE CALI FUND UNDER CBD DECISION 16/2.

A. DSI used for De-extinction Activities is "biotechnology" for Purposes of the CBD and the Nagoya Protocol.

CBD Article 2 paragraph 3 and Nagoya Protocol Article 2(d) define "biotechnology" as "[1] any technological application [2] that uses biological systems, living organisms, or derivatives thereof, [3] to make or modify products or processes for specific use."

Here, de-extinction is biotechnology as defined above. First, using the DSI of the Royal Panther for de-extinction is a technological application. An "application" is "a way in which something can be used for a particular purpose",[51] so a "technological application" is a way in which technology can be used for a specific purpose. Here, DSI of the Royal Panther is used to actively manipulate the Cougar genome through advanced biotechnological methods, thus operationalizing digital genetic information into the de-extinction process capable of producing a product. Thus, de-extinction constitutes a technological application.

Second, this application uses biological systems and derivatives thereof. The process utilizes fossil DNA, which is a biological system, and derives DSI from it. Thus, the DSI is a

[51] *Cambridge English Dictionary*, s.v. "application," https://dictionary.cambridge.org/dictionary/english/application (last visited Nov. 9, 2025).

derivative of that biological material.

Third, the asserted purpose of this technological application was to create Royal Panthers by modifying the Cougar's DNA, which constitutes a specific use.[52]

Therefore, DSI used for the de-extinction project is biotechnology.

B. Sidney Animal Park is a "user of DSI on genetic resources" for Purposes of CBD Decision 16/2.

CBD Decision 16/2 Annex paragraph 2 requires "[a]ll users of DSI on genetic resources to share benefits arising from its use in a fair and equitable manner under the multilateral mechanism." "All users" indicates that the Decision favors a broad interpretation of "users", according with the "ordinary meaning" of the term,[53] "someone who uses a product."[54] And Nagoya Protocol Article 2 defines "[u]tilization of genetic resources" explicitly to include the use of genetic resources "through the application of biotechnology". Then, this may be a person who directly applies DSI to genetic resources, as in creating the Royal Panther, or a person who indirectly uses the panthers as a genetic resource.[55] Neither CBD Decision 16/2, VCLT, nor Nagoya Protocol warrant a narrower interpretation.

In this case, Ridus directly used DSI to create the panthers, an application of biotechnology, and Sidney Animal Park indirectly uses the panthers, an application of biotechnology, as a product, exhibiting two panthers created from the fossil's DSI and earning significant profits from them. The fact that these living organisms are created, controlled, and displayed for human purposes,[56]

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[52] Record ¶ 31.
[53] *See* the Vienna Convention on the Law of Treaties (VCLT) Article 31.
[54] *Cambridge English Dictionary*, s.v. "user", https://dictionary.cambridge.org/dictionary/english/user (last visited Nov. 9, 2025).
[55] CBD Decision 16/2, Annex para. 3.
[56] Lucia Martinelli, Markku Oksanen & Helena Siipi, *De-extinction: A Novel and Remarkable Case*

clearly demonstrates that the panthers are products and the Park is using them to provide a service to visitors. Sidney Animal Park is a user of the panthers and therefore "user of DSI on genetic resources" under CBD Decision 16/2.

C. Sidney Animal Park is Engaged in Commercial Activity Covered by a Sector Currently Listed in CBD Decision 16/2.

1. Sidney Animal Park is engaged in captive animal breeding, under CBD Decision 16/2 Enclosure I(1)(d).

CBD Decision 16/2 Enclosure I(1) identifies sectors that may benefit directly or indirectly from the use of DSI on genetic resources. Under Enclosure I(1)(d), animal breeding is listed as a commercial activity.[57] Captive breeding is the collection of organisms from nature followed by human husbandry to maximize the reproduction and survival of an organism of interest, typically within a zoo, botanic garden, or other controlled environment.[58]

In this case, Sidney Animal Park provides two panthers with habitat and care,[59] within a controlled environment, which is designed to maximize their survival and potential reproduction. Moreover, the Park plans to allocate extra funds from the panthers' exhibition to support captive breeding programs for other species,[60] demonstrating a long-term breeding purpose.

Therefore, Sidney Animal Park is engaged in captive animal breeding, under CBD Decision 16/2 Enclosure I(1)(d).

2. Sidney Animal Park is engaged in biotechnology, under CBD Decision 16/2

of Bio-objectification, 55 Croat. Med. J. 423, 424 (2014).
[57] CBD Decision 16/2, Enclosure I.
[58] Katherine Ralls & Jonathan D. Ballou, Captive Breeding and Reintroduction, in 1 Encyclopedia of Biodiversity 662, 662–67 (Simon A. Levin ed., 2d ed. 2013).
[59] Record ¶ 33.
[60] Record ¶ 35.

Enclosure I(1)(e).

Even if the Court finds that Sidney Animal Park is not engaged in captive animal breeding, it is still engaged in biotechnology under CBD Decision 16/2 Enclosure I(1)(e). The Park exhibits two panthers that are products of biotechnology and generates profits through ticketed admission and merchandise sales. As such, the Park operates in a sector that benefits from the use of DSI.

According to UNCITRAL Model Law on International Commercial Arbitration, the term "commercial" is broadly interpreted to encompass all relationships of a commercial nature, with an illustrative list, such as supply of goods/services, distribution, licensing, financing, joint ventures, carriage, etc.[61]

In this case, Sidney Animal Park supplies zoological exhibition services. It operates a venue exhibiting two panthers, offers ticketed admission, and sells merchandise.[62] These activities constitute commercial services, as the Park transforms the use of biotechnology-derived panthers into economic value. Therefore, the Park's conduct is commercial under the Model Law.

In conclusion, Sidney Animal Park is engaged in biotechnology by earning profits from biotechnology-derived panthers, under CBD Decision 16/2 Enclosure I(1)(e).

D. Even if not so, Ridus must Urge Sidney Animal Park to Contribute to the Cali Fund.

1. Ridus must implement CBD Decision 16/2, Annex paragraph 1(b).

Pursuant to CBD Decision 16/2 Annex 1(b), the multilateral mechanism for the fair and equitable benefit-sharing from the use of DSI on genetic resources arises where DSI is not subject

[61] United Nations Commission on International Trade Law (UNCITRAL), *Model Law on International Commercial Arbitration* art. 1, n.2 (1985, revised 2006).
[62] Record ¶¶ 33, 34

to Mutually Agreed Terms (MAT) established at the time of access.

In particular, Ridus generated DSI from the fossil's DNA without negotiating MAT with Anecoyon. Accordingly, no MAT governs the use of the DSI, which addresses the bilateral benefit-sharing arrangement.[63] Therefore, Ridus's use of the DSI falls directly within the scope of the multilateral mechanism specified under CBD Decision 16/2.

In conclusion, Ridus must implement CBD Decision 16/2 Annex 1(b).

2. Ridus must act in accordance with the Principles of Good Faith and Estoppel.

Under VCLT Article 26, every treaty in force is binding upon the parties to it and must be performed by them in good faith. In *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia),[64] ICJ emphasized the good faith principle, recognizing that, consistent with VCLT Article 26, the purpose of the Treaty and the intentions of Parties should prevail over its literal application, and that Parties must apply the treaty in a reasonable manner to achieve its purposes.[65] This reasoning applies here because Ridus adopted the contents of CBD Decision 16/2.[66]

Furthermore, the principle of estoppel, a specific manifestation of good faith, requires: [1] a clear and consistent representation by one State, [2] reliance by another State on that representation, and [3] detriment suffered as a consequence of that reliance.[67]

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[63] Clarification No.13.
[64] *See* supra note 46.
[65] *See* supra note 65, at 75–76, para. 142.
[66] Record ¶ 13.
[67] *North Sea Continental Shelf (Fed. Rep. of Ger./Den.; Fed. Rep. of Ger./Neth.)*, Judgment, 1969 ICJ. 3, 26, para. 30 (Feb. 20); (Denmark and the Netherlands brought cases against Germany over the delimitation of the North Sea continental shelf. The Court held that the boundaries should be determined by agreement based on equitable principles, reflecting each State's natural prolongation, and found that the equidistance principle was not customary international law.);
Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Eq. Guinea intervening), Judgment, 2002 ICJ. 303, 346 para. 57 (Oct. 10); (Cameroon sued Nigeria over sovereignty of the Bakassi Peninsula and boundary delimitation. The Court held that, under

Specifically, CBD Decision 16/2 discussed the use of DSI on genetic resources and its fair and equitable benefit-sharing. It sets the specific financial thresholds, which should be taken into account when imposing the obligation to contribute to the Cali Fund. In 2024, at CBD COP16/NP-MOP5, Ridus officially announced its commitment to implement CBD Decision 16/2 by requiring commercial entities within its jurisdiction to make appropriate contributions to the Cali Fund.[68] This statement reflects Ridus's acknowledgment of the importance of fair and equitable benefit-sharing under the CBD and the Nagoya Protocol, and Anecoyon reasonably relied on Ridus's official commitment to implement CBD Decision 16/2.

Furthermore, Anecoyon suffered a detriment as a consequence of Ridus's inconsistent conduct. Ridus's conduct, which is contrary to its official statement, not only breached Anecoyon's legitimate expectation that benefit-sharing would occur but also worsened Anecoyon's legal position regarding its sovereign rights over its genetic resources. By enabling the public display of organisms derived from Anecoyon's genetic resources, Ridus effectively undermined Anecoyon's ability to assert its ownership and control over those resources.

Even Ridus recognizes that Sidney Animal Park obviously meets the financial thresholds. Nevertheless, Ridus refuses to require Sidney Animal Park to contribute to the Cali Fund, asserting that the Park is not within the commercial sector.[69] This reasoning, however, rests solely on a formalistic interpretation of commerciality. Denying commerciality merely for reasons of *not listed* defeats the object and purpose of CBD Decision 16/2, since the list is not exhaustive, opening the scope of users widely by specifying both direct and indirect ones. And as shown above, Sidney

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colonial treaties, Bakassi belonged to Cameroon, ordered Nigeria to withdraw its forces, and dismissed both parties' additional claims.)

[68] Record ¶ 13.

[69] Record ¶ 41.

Animal Park is “commercial” and therefore subject to the regulatory framework established by CBD Decision 16/2. Therefore, Ridus must act in accordance with the principles of good faith and estoppel.

In conclusion, Ridus must urge Sidney Animal Park to contribute to the Cali Fund under CBD Decision 16/2.

CONCLUSION AND PRAYER FOR RELIEF

Applicant, Anecoyon, respectfully requests that this Honorable Court adjudge and declare that:

(1) Ridus's conduct violated the PIC provisions of CBD and Nagoya Protocol.

(2) Ridus must urge Sidney Animal Park to contribute to the Cali Fund under CBD Decision 16/2.

RESPECTFULLY SUBMITTED

AGENTS OF APPLICANT