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THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE CASE CONCERNING

QUESTIONS RELATING TO **PRIOR INFORMED**

CONSENTAND BENEFIT SHARING IN THE CONTEXT OF

DE-EXTINCTION

ANECOYON (APPLICANT)

v.

RIDUS (RESPONDENT)

MEMORIAL FOR THE RESPONDENT

30th Annual Stetson International Environmental Moot Court Competition

2025-2026

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TABLE OF ABBREVIATION

Abbreviation	Meaning
ABS	Access and Benefit-Sharing
ARSIWA	ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
Cali Fund	Global Multilateral Benefit-Sharing Mechanism under CBD Decision 16/2
DSI	Digital Sequence Information
ICJ	International Court of Justice
ILC	International Law Commission
Nagoya Protocol	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD
PIC	Prior Informed Consent
SAP	Sidney Animal Park
UN	United Nations
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
VCLT	Vienna Convention on the Law of Treaties

STATEMENT OF JURISDICTION

In accordance with *Article 40, paragraph 1 of the Statute of the International Court of Justice*, the Sovereign States of Anecoyon and Ridus have submitted to the International Court of Justice ("ICJ") their Special Agreement pertaining to questions concerning their differences relating to Prior Informed Consent and Benefit Sharing in the context of De-extinction of the Royal Panther. The Parties transmitted a copy of the joint notification to the Special Agreement to the Registrar of the ICJ on 14 July 2025, which the Registrar acknowledged receipt on 28 July 2025. The Parties agree that the Court has jurisdiction to decide the matter.

STATEMENT OF FACTS

Ridus is a sovereign, high-income State bordering Anecoyon, a lower-middle-income State. Both were formerly provinces of the Kingdom of Mammuthus but have been independent since 1914. Ridus is a Party to the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access and Benefit-Sharing and CITES, and has consistently supported multilateral benefit-sharing, including CBD Decision 16/2 and the Cali Fund.

The Royal Panther (Puma royali), extinct for approximately 6,000 years, historically inhabited the territories of both States, as confirmed by cave paintings in each. The best-preserved fossil was discovered in Anecoyon in 1901. In 2009, under a lawful loan agreement for "education and scientific research," the fossil was transferred to the National Museum of Ridus, a State organ, which established the terms of its use.

In 2020, the Museum announced a project to extract DNA from the fossil to create a reference genome and pursue de-extinction and reintroduction of the species in protected areas in Ridus as part of a broader rewilding initiative. Anecoyon objected in 2022. Ridus engaged in good-faith negotiations, maintaining that prior informed consent (PIC) under the Nagoya Protocol was not required because the fossil was obtained under the 2009 agreement, the Protocol cannot apply retroactively, and the Royal Panther was a transboundary species whose genetic resources could also be sourced from within Ridus under Article 11 of the Protocol.

Negotiations from 2022–2023 ended without agreement. Respecting Anecoyon's new legislation, Ridus returned the physical fossil in December 2023 but continued the de-extinction project as an exercise of its sovereign right to ecological restoration. Ridus consulted and obtained the consent of the Panthera Indigenous communities, who reside exclusively in Ridus and are descendants of those who historically lived alongside the Royal Panther. In August 2024, Ridus made the Digital Sequence Information (DSI) of the Royal Panther publicly available and contracted Salols Co. to advance the project. In December 2024, two panthers, Ixchel and Itzamna, were born; under Ridusian law they are State property and recognised as Royal Panthers. To ensure their care, Ridus placed them in the accredited non-profit Sidney Animal Park. Under the agreement, viewing-fee revenue is used exclusively for the panthers' care and for the Park's captive breeding of other species, including transboundary species benefiting both States. Members of the Panthera community may view the panthers free of charge.

Ridus plans to reintroduce future generations of Royal Panthers into a State-owned protected area as part of its rewilding project, including an eco-tourism component operated by the Panthera community to ensure direct economic benefits. When Anecoyon demanded that Ridus require Sidney Animal Park to contribute to the Cali Fund, Ridus maintained that CBD Decision 16/2 does not apply: the Park is a custodian of living animals, not a "user" of DSI engaged in "biotechnology," and its activities are non-commercial zoological garden activities analogous to non-profit zoos under CITES.

In a spirit of cooperation, Ridus has nevertheless agreed, for the purposes of these proceedings, not to contest that Sidney Animal Park meets the financial thresholds in Decision 16/2, and has submitted the questions before the International Court of Justice.

QUESTIONS PRESENTED

I. **DID RIDUS VIOLATE PRIOR INFORMED CONSENT REQUIREMENTS?**

II. **DOES THE NAGOYA PROTOCOL APPLY TO RIDUS'S DE-EXTINCTION PROJECT?**

III. **DID ANECOYON VIOLATE THE CBD THROUGH ITS REFUSAL TO COOPERATE?**

IV. **IS RIDUS REQUIRED TO SHARE BENEFITS OR CONTRIBUTE TO THE CALI FUND?**

SUMMARY OF ARGUMENTS

First, Ridus did not violate international law with respect to Prior Informed Consent. The Royal Panther fossil was lawfully accessed under a 2009 loan agreement expressly permitting "scientific and educational" research, which satisfied any PIC obligation under the CBD at the moment of access. The Nagoya Protocol cannot apply retroactively to this pre-entry-into-force transaction, and the PIC requirement attaches only at the act of access, not to each subsequent scientific use. In any event, extinct-species fossils and degraded ancient DNA fall outside the CBD's notion of "genetic resources", and Anecoyon's own public statements at COP, coupled with its failure to establish a domestic PIC framework, demonstrate that it did not require PIC for access to its genetic resources. Given the Royal Panther's historic presence in both States and the continuing cultural link of the Panthera communities in Ridus, Anecoyon cannot assert an exclusive "country of origin" status or a superior right to control the project.

Second, Anecoyon's refusal and its benefit-sharing claims are themselves inconsistent with the CBD and Nagoya objectives. Ridus's de-extinction and DSI activities are non-commercial, conservation-driven scientific research aimed at restoring a shared extinct species and promoting biodiversity, thereby advancing cooperation, sustainable use and fair and equitable benefit sharing. Sydney Animal Park neither accesses nor uses DSI and functions as a non-profit zoological institution, charging only cost-recovery viewing fees that are reinvested into ex-situ conservation and captive breeding, including for transboundary species. As DSI is not "biotechnology" or "utilization of genetic resources" in the material, tangible sense contemplated by the CBD and Nagoya Protocol, and Sydney Animal Park is not a "user" within the meaning of CBD Decision 16/2, no obligation to share monetary benefits or contribute to the Cali Fund arises in this case.

ARGUMENTS ADVANCED

A. RIDUS CONDUCT COMPLIED WITH THE PRINCIPLE OF PIC UNDER THE NAGOYA PROTOCOL, CBD, AND THE OBJECTIVES OF THESE CONVENTIONS.

Ridus contends that its conduct complied with the principle of PIC, as there was no obligation to attain a PIC under Nagoya Protocol, and for its obligation under the CBD it had already attained a PIC in the form of the loan agreement.

1.1. The obligation for PIC under the Nagoya Protocol will not be applicable in the case of Royal Panther's fossil.

Ridus submits that no additional PIC obligation arises under the Nagoya Protocol, as (**1.1.1)**the fossil was lawfully accessed for scientific research before the Protocol's entry into force, (**1.1.2**) the PIC requirement attaches only at the moment of access, and (**1.1.3**) Anecoyon's own public statements clearly indicate that it did not require PIC for access to its genetic resources.

1.1.1. Nagoya Protocol will not apply retroactively

While the Nagoya Protocol builds upon the obligation for PIC[1], a generally does not apply to

[1] 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 (adopted 29 October 2010,

events that occurred before its entry into force.[2] A treaty only applies retroactively if an intention to do so appears either in the text of the treaty or "*is otherwise established*" by the Parties.[3] First, there is no express intention in the Nagoya Protocol for it to apply retroactively. Four proposed provisions on retroactive application were abandoned, showcasing there was no implicit intention for a retroactive application either.[4] The second limb of retroactive application is if it has been "otherwise established by the Parties".[5] To determine this, the Permanent Court in *Mavrommatis Palestine Concession* held that there must be a "specific object" of the treaty, necessitating its retroactive application.[6] With regards to the Nagoya Protocol, the primary objective was to expand the terms of the CBD by detailing the obligations related to benefit sharing and access to genetic resources.[7] It was neither designed as an interpretive tool[8], nor did it mandate the retroactive application of its provisions. This is also complemented by the fact that Draft European Commission Regulations on the Nagoya Protocol mandate its application only for genetic resources and traditional knowledge accessed after 2014, i.e., post-Nagoya's entry into force.[9] Hence, it would be unlawful to impose a retroactive application of Nagoya.

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entered into force 12 October 2014) [2011] UNTS 30619 art 6. (Hereinafter referred as Nagoya Protocol)

[2] Vienna Convention on the Law of Treaties (opened for signature 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 28; *Ambatielos (Greece v United Kingdom) (Merits)* (1953) 12 UN Report of International Arbitral Awards 83, 40; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422, [100].

[3] VCLT, art 28; Corten and Klein (2011), 725.

[4] Kamau, Fedder and Winter (2010), 254–255

[5] ; ILC Commentary on the Law of Treaties, 212–213;

[6] P.C.I.J. (1924) Series A, No. 2, p. 34.

[7] Morgera, Elisa, Tsioumani & Buck, 2-4

[8] *Chamizal Tract*, 325.

[9] Draft Regulation of the European Parliament and of the Council on Access and Benefit-Sharing, para 2.1

1.1.2 Prior Informed Consent is restricted to the act of access and not every subsequent utilization of the genetic resource.

The PIC requirement arises only at the time of access to the genetic resources, and not for every "subsequent utilizations".[10] Ridus had accessed the fossil, subject to the consent of Anecoyon through the loan agreement in 2009.[11] Both the CBD and NP impose an obligation for PIC, prior to the genetic resource being accessed by a Party.[12] While the CBD and NP do not lay down a comprehensive definition for access, through subsequent state practice, the act of access is defined as the moment a genetic resource "crosses the border" of the Providing State.[13] It is only then that the state accessing the resource is subject to the requirement of seeking PIC of the Providing State, and there is no "continuing obligation" to seek PIC for every act of utilization on the genetic resource.[14] Anecoyon loaned Ridus the fossil for scientific research only when the CBD was in force, so PIC is restricted to the act of access only. Anecoyon provided this through loaning the fossil for scientific research, and with "no provision to the contrary" under Anecoyon's national legislation, there is no additional obligation under the Nagoya regime to seek an additional PIC.

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[10] T. Greiber et al., *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-Sharing* (IUCN, 2012), p. 129.

[11] Para 15, Moot Problem

[12] Nagoya Protocol art 6 (1); CBD, art 15 (5)

[13] Margo A. Bagley & Arti K. Rai, *The Nagoya Protocol and Synthetic Biology Research: A Look at the Potential Impacts,* p. 18

[14] T. Greiber et al., p.24

1.1.3. Anecoyon's own statement at the COP established that it did not require PIC for access to its genetic resources

Statements made by a state in a public domain have the effect of creating a legally binding obligation, if it is the intention of the state to be bound by it.[15] Such statements are internationally binding, even if they are made beyond the context of initial international negotiations.[16] In the 5th Meeting of the Conference of the Parties, Anecoyon publicly declared that "all natural resources belong to Mother Earth".[17] This statement came at a time when the Contracting Parties discussed the use of genetic resources and benefit sharing for DSI uses.[18] While the CBD and NP establish PIC requirements for access to genetic resources, this requirement ceases to exist if the Provider Party "establishes otherwise".[19] Anecoyon's phrasing establishes that all resources belong to a common resource - the "mother earth"- with no state having exclusive right over them. This, coupled with the fact that Anecoyon had enacted no national legislations, enforcing PIC requirements even after the entry into force of NP showcases that determined that no PIC requirements were obligatory upon the user state. The CBD and NP provide necessitate that the Providing Party must take steps to establish the necessary PIC procedure system within its legal system.[20] If the Party fails to do so, then its ability to control the user state's access and ensure benefit sharing under the CBD and Nagoya Protocol is lost.[21] In the present case, Anecoyon took

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[15] Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974, p. 253, para. 43.

[16] ibid

[17] Para 12, Moot Problem

[18] "16th Meeting of the Conference of the Parties to the Convention on Biological Diversity (COP 16) / 5th Meeting of the Parties to the Nagoya Protocol (NP-MOP 5).

[19] Morgera, *Unravelling the Nagoya Protocol*, p142.

[20] Nijar, *The Nagoya Protocol on Access and Benefit Sharing*, 36.

[21] Glowka et al., *A Guide to the Convention on Biological Diversity*, 81.

no such steps and in fact, determined otherwise.

1.2. De-extinction and DSI activities squarely fall within the ambit of "scientific and educational research".

The agreement between Ridus and Anecoyon expressly authorized use of the loaned fossil for "scientific and educational" research purposes.[22] De-extinction is commonly defined as the "process of creating an organism that resembles an extinct species".[23] Scientific research, by contrast, entails "systematic, planned studies" designed to generate new knowledge or resolve existing problems.[24] As a technique aimed at addressing the global problem of biodiversity loss by restoring extinct species, de-extinction falls squarely within contemporary scientific research in biotechnology and conservation science.

Second, DSI generation and uses, as advanced by Ridus, are central to non-commercial scientific activities, such as sequence generation, uploading to public databases, comparative genomics, DNA barcoding, conservation genomics, and university teaching.[25] Since these activities are research-driven and contribute to the conservation of species, they fall within the ambits of scientific research.[26]

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[22] Para 15, Moot Problem

[23] C. Ö. Çaparlar & N. Dönmez, "What Is Scientific Research and How Can It Be Done?"

[24] Dedeurwaerdere et al., "Governing Global Scientific Research Commons under the Nagoya Protocol," in *The 2010 Nagoya Protocol on Access and Benefit-Sharing* (eds. Morgera et al., Brill, 2012), pp. 389–412.

[25] Cowell, C., Paton, A., Borrell, J.S., et al. (2021). Uses and Benefits of Digital Sequence Information from Plant Genetic Resources: Lessons Learnt from Botanical Collections. *Plants, People, Planet*, 4(1), 33

[26] Nagoya Protocol, Art 8

1.3. CBD does not contemplate attaining PIC for genetic resources collected from extinct species.

Furthermore, Ridus submits that no obligation for PIC arises as the Convention on Biological Diversity does not contemplate attaining PIC for resources collected from extinct species.

1.3.1. Definition of Genetic Resources under CBD does not encompass extinct species

The CBD provides a restrictive definition of "genetic resources": it encompasses only "genetic material of actual or potential value"[27], while "genetic material" is limited to material containing "functional units of heredity".[28] Paleontological and archaeological remains, such as the fossil of Royal Panther, fall outside this notion, since the genetic material extracted from them has no recognised "actual or potential value" at the time of their collection and cannot perform any biological function.[29] This is due to certain problems governing "ancient DNA" (aDNA).[30] Unlike the functional DNA of living organisms, aDNA is characterized by profound post-mortem degradation.[31] It undergoes severe fragmentation, breaking down into minuscule segments that are biologically inert and incapable of coding for proteins or being utilized in any functional biological process,[32] thereby failing the criterion of containing "functional units of heredity"

[27] Convention on Biological Diversity, art 2.

[28]ibid

[29] Gaeta, Raffaele. "Ancient DNA and Paleogenetics: Risks and Potentiality." Pathologica 113, no. 2 (2021): 141.

[30] Ibid, 142

[31] Ruffer MA. On arterial lesions found in Egyptian mummies (1580 B.C.-525 A.D.). J Pathol 1911;15:453-462. https://doi.org/10.1002/path.1700150403 10.1002/path.1700150403

[32] Roberts C, Ingham S. Using Ancient DNA Analysis in Palaeopathology: A Critical Analysis of Published Papers, with Recommendations for Future Work Int J Osteoarchaeol 2008;18:600-613.

under the CBD. Furthermore, the material is compromised by cumulative chemical damage that commence upon cell death and irrevocably corrupt the genetic information, which is prone to make it lose even its "potential value". [33] At the time the fossil was handed over to Ridus, the Royal Panther species had been extinct for over 6000 years[34]. Even if Ridus's later sequencing activity produced DSI, that information derives from computational reconstruction, not from an extant genetic resource.[35] The act of sequencing cannot retroactively transform the fossil into a "genetic resource," as the definition depends on the condition of the material at the time of access, not on subsequent technological developments.

1.4. Only the Pantheras of Ridus have a qualified right to grant PIC

Under the CBD and the Nagoya Protocol, the fundamental obligation of States is to ensure equitable sharing of benefits arising from the use of genetic resources with those indigenous communities that hold a direct and established link to such resources[36] The Nagoya Protocol expressly requires Parties to ensure community prior informed consent (PIC) "in accordance with national legislation," where communities hold genetic resources.[37] However, this requirement arises only in respect of communities that exist and hold such resources within the territory of the State concerned.[38] Since no organized Panthera community remains in Anecoyon, there are no identifiable rights holders in that State from whom PIC could be sought.

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[33] Ibid, 607

[34] Para 7, Moot Problem

[35] Elianne Lee. What Is Digital Sequence Information (DSI)?

[36] Human Rights Council, "Report of the Special Rapporteur on indigenous peoples' rights," A/HRC/24/41, paragraph 25.

[37] Nagoya Protocol, Art 6 (2)

[38] Morgera, Tsioumani and Buck, *Unraveling the Nagoya Protocol*, ch. 4. P. 148

By contrast, the Panthera communities in Ridus maintain the living cultural and genealogical connection to the extinct species.[39] Ridus's decision to consult these communities and obtain their approval satisfies the requirement of PIC under Nagoya Protocol.[40] The Nagoya Protocol does not impose a transboundary obligation to seek PIC from communities that no longer exist or exercise control over the relevant resources.[41]

1.5. Persuant to Article 11 of the Nagoya Protocol, States have a duty to cooperate when same resources are found within the territory of more than one Party

Under the Nagoya Protocol States have an obligation to cooperate when the "same genetic resources" are found in situ within the territories of more than one Party.[42] This duty is one of good faith and due diligence, requiring States to make best-endeavor efforts to identify and engage potentially concerned States in coordinated action.[43]

1.5.1 Anecoyon alone cannot be understood as the "country of origin"

The Royal Panther fossil was discovered in 1901 within the unified territory of the former Kingdom of Mammuthus, long before the creation of the modern States of Anecoyon and Ridus.[44] As such, Anecoyon cannot be regarded as the "*country of origin*" within the meaning of

[39] Para 5, Moot Problem

[40] Ibid 42

[41] Morgera, P. 149

[42] Article 11, Nagoya Protocol

[43] Elisa Morgera, *Unravelling the Nagoya Protocol* (Martinus Nijhoff, 2014) 211–213.

[44] Para 15, Moot Problem

the CBD, which defines it as the country that possesses genetic resources in situ within its jurisdiction.[45] At the time of discovery, no such jurisdiction existed. The genetic resources of the Royal Panther were part of a shared heritage of the single sovereign entity of Mammuthus, whose succession produced both Anecoyon and Ridus.[46]

1.5.2 Anecoyon's conduct violates Article 11

The Nagoya Protocol explicitly mandates that when the same genetic resources are discovered in the territory of more than one Party then the Parties must "endeavor to cooperate."[47] This duty requires States to make good-faith efforts to identify and engage all other potentially concerned Parties.[48] Anecoyon, despite knowing that the Royal Panther fossils were found within both its and Ridus's territories, failed to undertake any such effort. Instead of initiating cooperative measures or establishing a framework for coordinated management of the shared resource, Anecoyon acted unilaterally, asserting exclusive control over the fossil and withholding information relevant to its use.[49]. Failure to make "reasonable efforts" to identify or engage other States where the same genetic resources exist *in situ* constitutes non-compliance with the Protocol's due-diligence duty.[50] Anecoyon's assertion of exclusive ownership, demonstrates a failure to cooperate.

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[45] CBD, art 2

[46] Para 6, Moot Problem

[47] Nagoya Protocol, Article 11

[48] Elisa Morgera, *Unravelling the Nagoya Protocol* (Martinus Nijhoff, 2014) 211–213.

[49] Para 24, Moot Problem

[50] Morgera, p 224

2. ANECOYON'S REFUSAL UNDERMINES THE OBJECTIVE OF CBD.

The CBD embodies a positive obligation on Parties to cooperate toward the conservation of biodiversity and the sustainable use of its components.[51] It specifically mentions the "conservation of biological diversity"[52], cooperation in areas of "*matters of mutual interest, for the conservation and sustainable use of biological diversity*" , where the matter concerns areas beyond one's national jurisdiction. [53] The CBD further places an obligation to "facilitate exchange of information" for conservation and promoting biological diversity[54]. Consequently, Anecoyon's blanket refusal to even assess Ridus' proposal frustrates the cooperative and science-driven objectives of the Convention.

De-extinction research proposed by Ridus aims conservation by restoring lost biodiversity.[55] The Royal Panther is endemic to Anecoyon, and its extinction represents an irreplaceable loss to that area's ecosystem. The CBD must be interpreted to advance biodiversity restoration, not hinder It, as treaties must be read in light of their purpose.[56] Anecoyon's unilateral rejection of a scientifically vetted project proposed by Ridus contradicts this duty and undermines the cooperative spirit envisioned by the convention. Thus, by obstructing legitimate biodiversity restoration research, Anecoyon has failed to uphold its core duty under the CBD to *conserve*

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[51] Convention on Biological Diversity article 14 (a), opened for signature June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

[52] CBD., Art. 1

[53] CBD., Art 5

[54] CBD., Art 17(1)

[55] Béllo Carvalho, R. (2025). Between hype and hope: De-extinction is a tool, not a panacea for the biodiversity crisis. *Biological Conservation*, *309*.
https://www.sciencedirect.com/science/article/abs/pii/S0006320725003441

[56] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

biodiversity through cooperation and science-based measures.[57]

2.1. The refusal violates the principle of sustainable use under the CBD

CBD requires Parties to adopt *measures* that enable sustainable use, not blanket prohibitions.[58] The de-extinction project is precisely a *measure to restore sustainable ecological function* by reintroducing a keystone predator whose loss destabilized ecosystems in Anecoyon.[59]

Sustainable use requires balancing conservation with scientific innovation. Ridus' project aimed to restore biodiversity through bio-engineering under controlled ex-situ conditions, minimizing risk.[60] Anecoyon's approach, outright refusal without assessment, reflects avoidance, not sustainability. Therefore, Anecoyon's actions violate this principle by refusing to adopt or even evaluate measures for sustainable biodiversity restoration.

2.2. The refusal undermines the objective of "fair and equitable" benefit sharing under the CBD

The CBD establishes a reciprocal benefit-sharing relationship: conservation and monetary incentives for providers of the resource and research benefits for users.[61] Anecoyon's refusal to

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[57] T. Greely, H. (2017). Is De-extinction Special? *Stanford Law*. https://law.stanford.edu/wp-content/uploads/2017/07/Greely-2017-Hastings_Center_Report.pdf

[58] CBD Art. 10(b)

[59] Evan. (2015, December 3). *De-Extinction as a means of restoring biodiversity – Debating science*. https://websites.umass.edu/natsci397a-eross/de-extinction-as-a-means-of-restoring-biodiversity/

[60] Wang, S., Li, W., & Feng, G. (2025, October 11). De-extinction and beyond: trait design powered by generative AI. *Trends in Biotechnology*. https://www.sciencedirect.com/science/article/pii/S0167779925004032

[61] CBD., Art 15(7)

engage in access negotiations deprives both parties of this mutual advantage.[62] In conjunction, the Nagoya Protocol requires Parties to create conditions that promote and encourage research contributing to the conservation and sustainable use of biological diversity, particularly through simplified access measures for non-commercial purposes.[63] Anecoyon's blanket refusal to enter negotiations directly contravenes this mandate, as it obstructs scientific collaboration that could advance biodiversity preservation.

Similarly, the CBDs also highlights equitable benefit-sharing principle aims to bridge the gap between technology-rich and biodiversity-rich countries.[64] Anecoyon's stance perpetuates inequality by denying Ridus, a technologically advanced but biodiversity-deficient State, any access to genetic material necessary for conservation. Therefore, the refusal to engage in benefit-sharing dialogue contravenes both the letter and the spirit of Articles 15(7) and 19(2).

2.3. **The refusal to give Prior Informed Consent violates the CBD's objective of cooperation**

The CBD imposes a continuing obligation on States to cooperate in scientific research relevant to biodiversity. [65] Article 5 establishes an affirmative duty on Parties to pursue cooperation,

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[62] Morgera, E., & Tsioumani, E. (2010). The evolution of benefit sharing: linking biodiversity and community livelihoods. *Review of European Community & International Environmental Law*, *19*(2), 150–173. https://doi.org/10.1111/j.1467-9388.2010.00674.x

[63] The Nagoya Protocol., Art 8(a) *United Nations Convention on Biological Diversity.* "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." 29 Oct. 2010. United Nations Treaty Collection

[64] CBD., Art 19(2)

[65] Glowka, L., Burhenne-Guilmin, F., & Synge, H. (1994). *A guide to the Convention on Biological Diversity*. https://portals.iucn.org/library/efiles/documents/EPLP-no.030.pdf

particularly where such collaboration advances shared conservation goals. [66]Anecoyon's outright rejection of a joint research proposal by Ridus constitutes a breach of this cooperative duty.

Furthermore, CBD obliges Parties to exchange scientific data relevant to conservation.[67] By denying access to genomic material and refusing to share archives of Puma royali DNA, Anecoyon has obstructed the exchange of information central to the CBD's functioning. Consequently, Anecoyon's actions breach its obligations of international cooperation and information exchange, frustrating the very mechanisms through which the CBD achieves its objectives.

B. NO BENEFIT SHARING OBLIGATION ARISES UNDER THE CBD AND NAGOYA PROTOCOL

3. DSI DOES NOT CONSTITUTE BIOTECHNOLOGY UNDER THE CBD

The CBD defines several key terms in material and tangible terms, including "genetic resources," "genetic material," "derivative," and "biotechnology."[68] These definitions all hinge on the notion of physical and material resources. For instance, genetic resources and genetic material are both defined in terms that presuppose the physicality of the material, as seen in Article 2 of the CBD, which emphasizes "material" aspects when referring to genetic resources used for biotechnological purposes.[69] The CBD thus treats these resources as tangible, physical entities

[66] CBD., Art.5

[67] CBD., Art 17(1)

[68] 65. Muller MR. Genetic resources as natural information: Implications for the Convention on Biological Diversity and Nagoya Protocol. Oxon and New York: Routledge; 2015. [Google Scholar]

[69] Crawley F (2016) The Nagoya Protocol: What it is and what it means for your business. https://www.bioindustry.org/uploads/assets/uploaded/5baa9a37-a4cd-41e3-b61056ae270a3510.pdf

that are accessible and exploitable.

The definition of "derivative" under Article 2(e) of the Nagoya Protocol further highlights the material focus of the regime.[70] A derivative, as defined by the Nagoya Protocol, includes *"naturally occurring biochemical compounds resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity."*[71] This definition, again, links derivatives to the biochemical or physical aspects of genetic resources. Consequently, the CBD and Nagoya Protocol have consistently and explicitly framed its extent as applying to material genetic resources and their derivatives.

It is important to note that DSI is digital information derived from genetic data, not a tangible or physical substance.[72] Unlike DNA or other biological material, DSI is intangible, consisting of digital sequences stored in electronic formats, and does not have a physical presence or form.[73] Thus, it falls outside the CBD's traditional understanding of biotechnology, which focuses on the physical manipulation of genetic material.

3.1. Biotechnology refers to a direct manipulation of living organisms, not computational data use

[70] Nagoya Protocol, Art. 2(e)

[71] ibid

[72] Food and Agriculture Organization of the United Nations, The role of digital sequence information in the conservation and sustainable use of crop wild relatives (FAO 2022) https://openknowledge.fao.org/server/api/core/bitstreams/ecb1dcc2-9458-4a9b-abf1-29a518e0599d/content

[73] Houssen W, Sara R, Jaspars M (2020) Digital sequence information on genetic resources: concept, scope and current use. CBD, Ad Hoc Technical Working Group on Digital Sequence Information on Genetic Resources. Montreal, Canada. CBD/DSI/AHTEG/2020/1/3. https://www.cbd.int/doc/c/fef9/2f90/70f037ccc5da885dfb293e88/dsi-ahteg-2020-01- 03-en.pdf.

When the CBD was negotiated between 1988 and 1992, the term "biotechnology" carried a narrow and tangible meaning like genetic material and resources.[74] It referred to technological applications using *living or viable biological systems*, such as genetic engineering, industrial enzyme development, and pharmaceutical biotechnology.[75] During these negotiations, discussions under the Ad Hoc Working Group on Biotechnology and Biosafety focused primarily on biosafety risks associated with living modified organisms (LMOs)[76]. These deliberations show that biotechnology was understood to mean *direct manipulation of living organisms*, not computational or digital use of genetic data. The drafters' intent was to regulate laboratory and environmental use of living material, not digital representations of genetic sequences.[77]

Therefore, the de-extinction project does not fall within this original conception of biotechnology. The DSI used by the Ridus represents digital codes extracted from previously extinct genetic material, not living biological matter.

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[74] Manzella D (2016) The global information system and genomic information: transparency of rights and obligations. International Treaty on Plant Genetic Resources for Food and Agriculture. First meeting of the scientific advisory committee on the global information system of Article 17 of the Treaty, Rome, Italy, IT/GB7/SAC-1/16/ BSP10. http://www.fao.org/3/a-bq620e.pdf.

[75] Carrizosa S, Brush SB, Wright BD, McGuire PE. Accessing biodiversity and sharing the benefits: Lessons from implementing the Convention on Convention on Biological Diversity. Gland and Bonn: IUCN; 2004. [Google Scholar]

[76] UNEP/CBD/BSWG/2/2, Report of the Second Ordinary Meeting of the Open-ended Ad Hoc Working Group on Biosafety (20 March 1997) 4–7.

[77] Chijioke Okafo, 'Digital Sequence Information and the Access and Benefit-Sharing Obligation of the Convention on Biological Diversity' (2023) Sustainability https://pmc.ncbi.nlm.nih.gov/articles/PMC10043851/

3.2.Since DSI Does Not Constitute "Utilization of Genetic Resources" under the Nagoya Protocol

The Nagoya Protocol defines the "utilization of genetic resources" as "to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention."[78] This definition explicitly ties the Protocol's ABS obligations to research and development activities that focus on the *material composition* of a genetic resource.[79] The phrase "genetic and/or biochemical composition" links "utilisation" to research on the *composition* of a genetic resource (i.e., the material) and the *application of biotechnology*. Consequently, the scope of the Nagoya Protocol presupposes a connection to material biological entities.

State Practise demonstrates that several Parties, including Japan and Switzerland, have emphasized that DSI is informational and not a physical genetic sample, and therefore should not be treated as a genetic resource under the Nagoya framework.[80] This is due to the fact that DSI is not the genetic resource itself but an informational representation of its sequence. Once extracted from the physical specimen, DSI no longer retains the "genetic and biochemical composition" required by Article 2(c).[81] Therefore, Ridus' use of DSI derived from fossilized

[78] Nagoya Protocol on Access and Benefit-Sharing, Art. 2(c)

[79] Crawley F (2016) The Nagoya Protocol: What it is and what it means for your business. https://www.bioindustry.org/uploads/assets/uploaded/5baa9a37-a4cd-41e3-b61056ae270a3510.pdf

[80] ABS Initiative, Introductory Guide to Digital Sequence Information (DSI) and Access and Benefit Sharing (ABS) (2019) 9 https://www.abs-biotrade.info/fileadmin/Downloads/3.%20TOPICS/SPECIFIC%20ISSUES/DSI/RIGHT/Introductory-Guide-DSI-ABS-Initiative-2019.pdf

[81] Nagoya Protocol on Access and Benefit-Sharing, Art. 2(c)

DNA for the de-extinction of the Puma royali involves purely digital manipulation rather than research on the tangible genetic composition of a living or viable biological system. Consequently, Ridus' actions are not "utilization of genetic resources" within the meaning of Nagoya Protocol and, consequently, do not fall within the "biotechnology" contemplated by the CBD.[82]

3.3.The Object and Purpose of the CBD and Nagoya Protocol Limit Their Application to Tangible Genetic Resources, rendering DSI Outside the Scope of Biotechnology

When interpreting the Nagoya Protocol, and by extension the CBD, it must be interepreted in light with its "object and purpose".[83]The Nagoya Protocol makes clear that the objective is "the fair and equitable sharing of benefits arising from the utilization of genetic resources" through "access to genetic resources, technology transfer and funding".[84] Consequently, the Protocol is directed at the *use of genetic resources*, which are typically conceived as tangible, material biological entities.[85]

In applying the object and purpose of the treaty[86], a teleological interpretation would show that the Protocol was negotiated to govern physical flows and use of genetic resources and derivatives, ensuring benefit-sharing between providers and users of those physical resources.[87]

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[82] Convention on Biological Diversity, Art. 2 — https://www.cbd.int/convention/articles/?a=cbd-02

[83] VCLT Article 31(1) states that 'the ordinary meaning [is] to be given to the terms of the treaty in their context and in the light of its object and purpose.'

[84] Nagoya Protocol on Access and Benefit-Sharing, Art. 2(c)

[85] Crawley F (2016) The Nagoya Protocol: What it is and what it means for your business. https://www.bioindustry.org/uploads/assets/uploaded/5baa9a37-a4cd-41e3-b61056ae270a3510.pdf Accessed 17 Mar 2022

[86] Ibid, 16

[87] Chijioke Okafo, 'Digital Sequence Information and the Access and Benefit-Sharing Obligation of the

The absence of clear textual reference to digital sequence data in the negotiation history or treaty text suggests that the regime was not designed to regulate intangible sequence information. Therefore, DSI does not fall under "biotechnology" within the meaning of the CBD or Nagoya Protocol and Ridus cannot be held to have triggered the associated ABS obligations under those instruments.

4. SYDNEY PARK IS NOT A USE OF DSI AND NOT ENGAGED IN COMMERCIAL ACTIVITIES

4.1. Definition of 'Use(r)' of DSI

The definition and scope of DSI includes DNA, RNA, biochemical data and metabolites.[88] Using or utilizing DSI is to conduct research on such sequences to create commercial benefits as mentioned in the decision.[89] The Park did not access such DSI, neither did it carry out research on it for commercial purposes.

4.1.1. Sydney Park; NOT A User under 16/2:

Sydney Park neither obtained DSI from the fossil, nor did it research/apply it to produce the Royal Panthers. The Park received the Panthers and is only raising them through ex-situ conservation in line with its objectives to conserve and to re-wild. Sydney Park did not utilize

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Convention on Biological Diversity' (2023) Sustainability
https://pmc.ncbi.nlm.nih.gov/articles/PMC10043851/
accessed 9 November 2025.

[88] Report of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources (Montreal, Canada, 17-20 March 2020)
https://www.cbd.int/doc/c/9be1/8a64/818db9b0b839f3be517f819f/dsi-ahteg-2020-01-05-en.pdf

[89] CBD 16/2

the genetic resources as are mentioned in the Nagoya Protocol.[90] Utilization of genetic resource means to conduct research on genetic and biochemical composition of composition of genetic resources.[91] The Park did not carry out research on the DSI from the fossil, it only is raising the Panthers.

4.2 . Activities of Sydney Park are NOT Commercial:

Activities that derive profits or is concerned to the resale or trading of the products.[92] Sydney Park is not deriving profits from the display of the Royal Panthers. The Park is charging additional $40 for the care that it is providing to the Panthers. This is a sustainability arrangement from the park to cover its costs.[93] Even the access amount is reinvested for the captive breeding of other transboundary species. The zoo is charging this money not to obtain profits. Commercial activities are characterized by restrictions on access, generation of market products, generation of long-term, monetary benefits and it primarily benefits users.[94] On the contrary, non-commercial activities is characterized by conservation, public availability, purely non-commercial intention.[95] Similarly, non-commercial conservation is excluded from benefit-sharing.[96] Sydney Park is involved in ex-situ conservation of the Royal Panthers and such

[90] Art 2(c), Nagoya Protocol.

[91] Ibid., 1

[92] Cain LP and Meritt DA Jr, 'The Growing Commercialism of Zoos and Aquariums' (1998) 17 J Pol'y Anal. & Mgmt 298–312.

[93] Ibid., 5

[94] CBD, GTLE 1/INF/2 (2008) 5; CBD, WG-ABS 7/2 (2008) paras 13, 43–44

[95] Ibid., 3

[96] Regulation (EU) 511/2014, OJ L 150/59.

conservation is considered non-commercial.[97] Furthermore, the Park is not charging the Panthera community for viewing the Panthers. This makes it evident that the Park is not profit-motivated, rather is it more conservation and education oriented. Not charging the Panthera Community and using excess revenue for conservation of species bolster Sydney Park's commitment to biodiversity under WAZA.[98] This in turn is in line with the CBD's objectives regarding conservation.[99]

*4.3.*Activities of Zoo's as Non-Commercial under CITES

The activities of zoos are generally considered non-commercial as their primary goal is conservation.[100] Activities of zoos are considered commercial if the animals are imported or obtained for purely commercial purposes.[101] An activity can generally be described as 'commercial' if its purpose is to obtain economic benefit (whether in cash or otherwise), and is directed toward resale, exchange, provision of a service or any other form of economic use or benefit.[102] Since the Sydney Park is not using the Panthers for exchange or resale, such activities are cannot be commercial in nature. Even the excess money that is used to support captive breeding of transboundary species is also not commercial.[103]

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[97] Greiber T et al, *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-sharing* (IUCN Environmental Policy and Law Paper No 83, IUCN 2012).

[98] WAZA Commitment to Biodiversity Conservation. https://www.waza.org/priorities/conservation/waza-commitment-to-biodiversity-conservation/

[99] Art 1, CBD

[100] CITES Resolution 5.10 (Rev. COP 19)

[101] Ibid., 14

[102] Ibid., 14

[103] CITES Resolution 5.10 (Rev. COP 19), Annex

*4.4.*Sidney Animal Park does not operate within sectors covered by Decision 16/2:

The sectors that benefit directly or indirectly from the use of DSI in their commercial activities include biotechnology. "Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.[104] As the Park did not use the Royal Panthers or their derivatives to make products, it does not fall in the category of biotechnology. The list of sectors in the decision is not exhaustive.[105] The ISIC classification and the Central Product Classification also needs to be taken in account. Under the ISIC, the Sydney Park is classified under Botanical and Zoological Gardens and Nature Reserves Activities.[106] Furthermore, the services that Sydney Park can be classified in the sub-category of "Nature reserve services including wildlife preservation services".[107] The sub-class includes the operation of national parks, nature parks and reserves, including supervision, access and visiting services, conservation and maintenance services of national parks, nature parks and reserves.[108] The activities of Sydney Park thus fall into this classification as it is committed to the conservation of the Royal Panthers. Additionally, the Park is also responsible for the access and visiting services to the Royal Panther and it falls in the ISIC classification.[109]

*4.5.*Sydney Park Not Obligated to Contribute To the Cali Fund

[104] Art 2, CBD

[105] CBD 16/2, Enclosure I

[106] ISIC, Rev. 4 - Code 9103

[107] CPC, Version 2 - Code 96422

[108] CPC, Version 2 - Code 96422, Explanatory note.

[109] Ibid., 18

CBD 16/2 includes all those sectors that benefit from the direct or indirect use of DSI in its commercial activities.[110] It mentions that an entity exceeds the threshold for revenue, sales and assets, it will have to contribute to the Cali Fund. The Sydney Animal Park is firstly, not the user of DSI and secondly, the Sydney Park is not carrying out commercial activities as it is operated by a no-profit corporation. CBD 16/2 paragraph 5 mentions that entities will not have to contribute to the Cali Fund if they are not directly or indirectly using DSI on genetic resources. sectors that are active in the sectors listed in the enclosure I of the decision 16/2. This means that even if they are active in sectors listed in the Enclosure I, they still would not have to contribute to the Fund. The Sydney Park is not directly or indirectly using DSI. It only received the Royal Panthers and are hosting them by providing them a sanctuary. Thus, even if this act qualifies as "biotechnology" or "animal breeding", it still does not need to contribute to the Fund as it is not carrying out a commercial activity.

The activity of Sydney Park is not commercial as the Park is operated by a non-profit corporation. The display of the Royal Panthers is not for the purposes of generating profits and the even if excess amount is generated, it is invested on the conservation of biodiversity and on the transboundary species. This shows that the motive of the Park is not to put the DSI derived Panthers on the market for profit.

Even if the Sydney Park is considered a user of DSI, it will still not be obligated to contribute to the Cali Fund as users that use DSI for non-profit purposes are considered potential contributors and they only need to share non-monetary benefits.[111] Moreover, parties are invited to contribute

[110] CBD 16/2 para 3.

[111] Ad Hoc Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources, Second meeting

to the fund not obligated.[112] The use of word 'invited' and not 'must' shows that it is a voluntary fund.[113] This means that even if Sydney Park crosses the given threshold, it is still not obligated to contribute to the fund. When Ridus welcomed decision 16/2, it committed to require 'commercial entities' in its jurisdiction to make contributions to the fund. However, the activities of Sydney Park do not make it a commercial entity for the purpose of raising Royal Panthers, it is not required to contribute.

CONCLUSION & PRAYERS

[112] Potter Clarkson, 'The Cali Fund and DSI: What life sciences and biotech companies need to know now' (Potter Clarkson, 27 June 2025) https://www.potterclarkson.com/insights/the-cali-fund-and-dsi-what-life-sciences-and-biotech-companies-need-to-know-now/

[113] 'Digital Sequence Information (DSI): Outcomes of the CBD Meeting in October/November 2024' (20 December 2024) https://www.cbd.int/dsi-gr/decisions.shtml

Respondent, Ridus, respectfully requests the Court to adjudge and declare that:

I. Ridus' conduct complied with principles of PIC enshrined under the CBD and Nagoya Protocol.

II. DSI does not categorize as biotechnology under the CBD and Nagoya Protocol.

III. Sydney Park is not a commercial user of DSI and is not obligated to contribute to the Cali Fund

Respectfully Submitted,

Agents of Respondents