Team Number 73

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Memorial for Applicant

In the Case of Anecoyon (Applicant) vs. Ridus (Respondent)

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Table of Abbreviations

ABS	Access Benefit Sharing
BGCI	Botanical Gardens Conservation International
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DSI	Digital Sequence Information
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GBF	Kunming-Montreal Global Biodiversity Framework
ICJ	International Court of Justice
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
ISIC	International Standard Industrial Classification of all Economic Activities
PIC	Prior Informed Consent
VCLT	Vienna Convention on the Law of Treaties
WIPO	World Intellectual Property Organization

Questions Presented

I. Benefit Sharing to the ICJ

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

II. Prior Informed Consent to the ICJ

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

Statement of Jurisdiction

In accordance with Article 40(1) of the *Statute of the International Court of Justice*, the states of Anecoyon and Ridus submitted a Special Agreement to the International Court of Justice pertaining to their differences concerning questions relating to prior informed consent and benefit sharing in the context of de-extinction. The parties transmitted a copy to the Registrar of the Court on July 14, 2025. The Registrar acknowledged receipt on July 28, 2025. The parties agree that the Court has jurisdiction to decide this matter, and neither party will dispute the Court's jurisdiction in written or oral proceedings.

Statement of Facts

Background

Anecoyon and Ridus are two neighboring, independent states on the Passager Peninsula, and are separated by the Incilius River.[1] Anecoyon has a population of 10 million people and is considered a lower-middle income country[2]; Ridus has a population of 55 million and is considered a high-income country[3]. Both countries have strong indigenous roots, and small communities of the Panthera remain on the Peninsula in the modern-day state of Ridus.[4]

The Royal panther is an extinct species that formerly inhabited territory nearly 6,000 years ago that is now within both Ridus and Anecoyon. While fossil and bone remnants have been found in Anecoyon and Ridus, the best-preserved fossils are in Anecoyon. [5]

Anecoyon and Ridus are both UN Members and Parties to the Statute of the International Court of Justice (ICJ)[6]. Further, Anecoyon and Ridus are parties to the Vienna Convention on the Law of Treaties[7], and both are parties to the Convention on Biological Diversity (CBD)[8]. Finally, both states ratified and became Parties to the Nagoya Protocol in 2015[9], and both are Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[10].

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[1] R.2
[2] R.3
[3] R.4
[4] R.5
[5] R.6
[6] R.8
[7] R.9
[8] R.10
[9] R.11
[10] R.14

Genetic Resource Use

In 2009, the Anecoyon Ministry of Natural Resources loaned the best-preserved fossil of the Royal panther for a 20-year period to the National Museum of Ridus.[11] On September 6, 2022, the museum announced its intention to create a Royal panther reference genome and use the resulting DSI to re-introduce Royal panthers in protected areas in Ridus.[12] Anecoyon was made aware of the project and on September 27, 2022, and expressed its concerns about this project, and asserted their right as the "country of origin of genetic resources."[13] In response to Anecoyon's second diplomatic note on informed consent laws, Ridus contended that prior informed consent was not required and that Ridus had a claim to the DNA pursuant to Nagoya Protocol Article 11.[14]

While the fossil was eventually returned, Ridus announced on August 13, 2024, that the state completed work on a Royal panther genome sequence and made the DSI publicly available.[15] Upon publication of DSI, Ridus began collaborating with Salols Co. to resurrect the Royal panther using CRISPR-based genetic engineering.[16] On December 19, 2024, two panthers, Ixchel and Itzamna, were successfully produced through this process.[17] Anecoyon contends this use of DSI is biotechnology; Ridus does not.

Sidney Animal Park

[11] R.15
[12] R.16
[13] R.18
[14] R.19
[15] R.28
[16] R.31
[17] R.32

Ixchel and Itzamna are housed at the Sidney Animal Park, a privately-owned site hosting more than 300 different species of animals. The Park is operated by a non-profit corporation, and Ridus allows the non-profit corporation to charge visitors an extra $40 admission fee to see Ixchel and Itzamna in exchange for the park to provide care and habitation.[1819] Anecoyon asked that Ridus require Sidney Animal Park to provide 0.1% of its annual revenue to the Cali Fund, for they believe Sidney Animal Park a user of DSI on genetic resources and have met the necessary commercial thresholds. Ridus maintains the primary purpose of Sidney Animal Park is non-commercial in nature which exempts them from Cali Fund Contributions.[20]

Further negotiations between the states have not been able to resolve the dispute. Therefore, the issues have been submitted to the ICJ for judgment.

[18] R.33
[19] R.34
[20] R.40

Summary of Argument

I. DSI used for de-extinction purposes is considered biotechnology under CBD Decision 16/2, for it leverages technical applications of DNA and scientific technologies to produce a product for specific use. Therefore, the DSI use falls into a sector eligible for Cali Fund Contributions under Enclosure I of the CBD. Further, Sidney Animal Park is a user of DSI on genetic resources through the valorization of genetic resources and application of traditional knowledge to its use of genetic resources. While Sidney Animal Park was not engaged in the initial research and development of the genetic resources, they are a beneficiary within a large value chain that the Cali Fund intends to obligate should they benefit commercially from reliance on DSI. As such, considering the commercial thresholds set out in the Cali Fund are met, Sidney Animal Park is obligated to contribute to the Cali Fund.

II. Prior Informed Consent is required for any use of genetic materials loaned from a provider country to a user country under the Nagoya Protocol Article 6, and CBD Article 15. This consent ensures that the provider country understands the intended use, monetary benefits, and third parties involved in the use of their genetic resource. Anecoyon is classified as a provider country because the DNA extracted from the fossil originated in its territory and has been used in the de-extinction process. Ridus has gone beyond the terms of the original loan agreement and continued to use the genetic resource after consent had been revoked. This use runs counter to the CBD's objectives of conservation of biological diversity and fair and equitable benefit sharing. The harm to the animals and ecosystem, as well as the monetary and intellectual harm to Anecoyon

run counter to the CBD's objectives. Thus, Anecoyon's revoking of consent is legitimate and does not impose restrictions that run counter to the objectives of the CBD.

Argument

I. Benefit Sharing to the ICJ

A. Digital Sequence Information (DSI), when used for de-extinction purposes, is considered biotechnology.

We contend that Digital Sequence Information (DSI), when used for de-extinction purposes, is considered biotechnology under both the Convention for Biological Diversity (CBD) and the Nagoya Protocol. As a note of framing, the Conference of Parties to the CBD in multiple decisions—15/31 in 2022 and 16/2 in 2024—recognize that DSI use on genetic resources triggers benefit-sharing obligations. As both Ridus and Anecoyon are Parties to the CBD[21], this ought to clarify potential confusions regarding the applicability of DSI to the treaty framework.[2223]

On a foundational level, the de-extinction process is unquestionably a use of biotechnology and DSI plays an instrumental role in the success of Ridus' de-extinction project. The most prominent framework defining the scale and scope of biotechnology is Article 2 of the Convention on Biological Diversity (CBD), which in turn is referenced in the Nagoya Protocol. Article 2 of the CBD asserts that biotechnology is "any technical application that uses biological systems, living organisms, or derivatives thereof to make or modify products or processes for specific use".[24] However, the IGC recognizes this definition was intentionally broadly written for various interpretations and an understanding that the field of biotechnology may change over

[21] R. at page 3
[22] CBD, Decision 15/31
[23] CBD, Decision 16/2
[24] CBD, art. 2

time.[25] In line with Article 31 of the VCLT, a lack of clarity on treaty definitions ought to be interpreted with its "ordinary meaning" and "in light of its object and purpose."[26]

1. Biotechnology is not limited in scope to Article 2 of the CBD's definition.

Considering the breadth of the definition of biotechnology, international organizations have adopted more specific definitions for clarity over time, and we refer to these to produce an ordinary meaning. The Food and Agriculture Office (FAO) writes that biotechnology, when interpreted narrowly under the CBD, "covers a range of different technologies such as gene manipulation and gene transfer, DNA typing and cloning of plants and animals."[27] Similarly, Article 3(i) of the Cartagena Protocol on Biosafety to the CBD, more recently adopted in 2000, defines "modern biotechnology" as a) in vitro nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles, or b) fusion of cells beyond the taxonomic family.[28] We contend that this definition is the most relevant as it addresses the changing field, in particular 21st-century technologies that post-date the writing of the original Article 2 of the CBD. We address these definitions below with facts from the record.

2. DSI leverages technical applications of biological systems.

On a foundational level, DSI used for de-extinction purposes can be understood as a process that leverages genetic resources and scientific gene-editing technology—CRISPR—to take genetic resources from a component of a once-living organism.[29] The actions of Ridus and Salols Co. are undoubtedly applications of biotechnology; CRISPR-engineered cougar cells that

[25] Intergovernmental Comm. on Intellectual Prop. & Genetic Res., Traditional Knowledge & Folklore, 51st Sess., Geneva, Switz., May 30–June 5, 2025.
[26] VCLT, art. 31(1).
[27] U.N. FAO, "Glossary of biotechnology and genetic engineering," Accessed on Nov, 16, 2025, https://openknowledge.fao.org/server/api/core/bitstreams/44b59eaf-ec5d-4773-98ee-a20d02b4b604/content
[28] Cartagena Protocol on Biosafety to the CBD, art. 3(i)
[29] R.31

rely on DSI as a prerequisite were implanted into the placenta of the host cougar.[30] This is, a technical application of modern biotechnology; the technology leverages both direct injection of nucleic acid via implantation and enables the feasibility of animal cloning. Therefore, Salols Co.'s use of DSI for extinction must be considered biotechnology under the FAO's definition and under Article 3 of the Cartagena Protocol.

However, should this Court prefer the definition of biotechnology as written in the CBD, we argue that DSI, when used for de-extinction, would still be considered an application of biotechnology. We address the additional terms of derivative, specific use, and product/process below.

While the fossil used in the extraction process is neither a living organism nor a functional biological system, the DSI used is a digital copy of a derivative of a biological system showing the biochemical composition of an animal. Even though the fossil was returned, the existence of biochemical composition derivatives and DNA sequencing technology enabled the successful continuation of the de-extinction project.[31] Article 2(e) of the Nagoya Protocol defines a derivative as "a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity."[32] To this definition, the genetic material extracted from the fossil for the creation of DSI is a) a digital copy of a naturally occurring biochemical compound that b) results from the metabolism of nucleic acid in a once-living biological resource. In this instance, the success of the cloning project verifies heredity of the genetic material at the time of extraction from the fossil—thereby meeting the threshold for classification as a derivative.

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[30] R.31
[31] R.30
[32] Nagoya Protocol, art. 2(e)

3. DSI was used to produce a product for a specific use.

Finally, the application of DSI for de-extinction was further used to modify processes for a highly specific use—the final component of the definition of "biotechnology" in Article 2 of the CBD. Under this framing, we first argue that the Royal panthers can be conceived of as a product, for Anecoyon does not consider Ixchel and Itzamna as panthers.[33] While the court may hesitate to classify the panthers as products, the de-extinction process undoubtedly serves a particular commercial use and DSI was instrumental in modifying this process. Under a reasonable interpretation of the Royal panther project, Ixchel and Itzamna were produced for commercial reasons given the steep entrance fee charged to view them. In this regard, they were manufactured to sell viewership tickets and thereby meet the standard definition of a product, which is defined as something sold as a commodity.[34]

Beyond this, we argue that the Royal panther project was performed with a specific use in mind. Ridus argues in the record and their letter correspondence with Anecoyon that their stated goal is to "produce a reference genome and use DSI for de-extinction, explicitly to reintroduce Royal panthers in protected areas as part of rewilding."[35] Thus, there is an explicit purpose guiding the project: the rewilding project serves both an ecological purpose and a financial purpose, for Ridus intends to use the panthers as part of an eco-tourism project.[36] Inherently, the statement underscores the public benefit of rewilding as the motivating factor behind the use of DSI for de-extinction.

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[33] R.32
[34] Merriam Webster, *Product*, https://www.merriam-webster.com/dictionary/product (last visited Nov. 17, 2025).
[35] R.16
[36] R.36

B. Sidney Animal Park is a user of DSI on genetic resources and is engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2.

Having established that DSI use on genetic resources for the purpose of de-extinction is considered biotechnology under the CBD and Nagoya Protocol, we argue that Sidney Animal Park is a user of DSI under CBD decision 16/2. Further, having established that Sidney Animal Park is a user of DSI, we argue secondarily that Sidney Animal Park is engaged in sufficient commercial activity as defined in CBD decision 16/2 to necessitate contributions to the Cali Fund. To answer the first question, we look to the Nagoya Protocol and existing Access Benefit Sharing (ABS) frameworks. To answer the second question, we analyze Sidney Animal Park's function in the context of the record and Enclosure 1 of the CBD. We address both questions in turn.

1. There is a fundamental distinction between "user" and "utilizer" Of genetic resources.

We first analyze "user" in the context of Paragraph 3 in the Annex of CBD Decision 16/2. We make an important distinction: that a "user" and a "utilizer of genetic resources" are related but separate terms. Whether this question is answered narrowly using a "utilizer of genetic resources" definition or answered broadly using a "user" definition, Sidney Animal Park conducts the necessary operations to be classified as either. The CBD and Nagoya Protocol do not define "users" of DSI and instead only define "utilizing genetic resources"—intentionally so in order to allow for a broader level of use cases to require Cali Fund commitments.[37] Given the omission of a definition of a "user" in the Nagoya Protocol, most countries have added their own

[37] Van Vooren, B & Gevrenova, Y, "Resolving Access and Benefit-Sharing from biodiversity: Towards an Effective Global Benefit-Sharing Mechanism on Digital Sequence Information," Bioscience Law Review. May 2025.

definitions of "user" in their own ABSs, requiring us to consult existing Access Benefit Sharing (ABS) frameworks for clarity on the definition of a "user".[38] In accordance with Article 31(1) of the VCLT, we consult these ABS frameworks to derive an "ordinary meaning."[39]

a. The Cali Fund implies users of DSI fall along a value-chain.

First, the EU ABS separates a "user" from "utilization of genetic resources," defining a user as a "natural or legal person that utilises genetic resources or traditional knowledge associated with genetic resources".[40] The French ABS agrees and clarifies potential users, noting that simply the "valorization of genetic resources and the applications and marketing which derive from them" is sufficient to count as a use case.[41] The Nagoya protocol, on the other hand, defines "utilizing genetic resources" in Article 2(c) as "conduct[ing] 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."[42] These definitions, taken together, leave open the possibility that a user might not engage with the genetic resources directly, but instead benefit greatly from traditional knowledge or through a value chain.

b. The Cali Fund implies users of DSI fall along a value-chain.

This framework is in strong alignment with the Kunming-Montreal Global Biodiversity Framework (GBF), recognizing that DSI creates value in a large ecosystem rather than with one party alone. GBF Target 13 asks that parties take measures to ensure the fair and equitable sharing of all benefits arising from the utilization of genetic resources.[43] Critically, the multilateral Cali Fund, established pursuant to the GBF Target 13, was created such that any

[38] *Id*.
[39] VCLT, art 31(1).
[40] EU, reg No 511/2014
[41] (France), Title V of the Law of Biodiversity, Art L. 412-4(1)
[42] Nagoya Protocol, Art 2(c)
[43] GBF, Target 13

beneficiary of DSI in a multi-actor value chain—beyond simply those conducting research and development—are obligated to contribute. The language of the Cali Fund, in honoring Target 13 of the GBF, is specific in noting that the parties obligated to contribute are businesses and institutions who "rely on digital sequence information."[44] [45] Thus, "users" must be conceived of as any party dependent on DSI for their commercial revenues; in this case, Ridus and Salols Co. are the researchers reliant on DSI and Sidney Animal Park is the commercial benefactor reliant on DSI such that the panthers they make money on can be produced in the first place. Having recognized that Sidney Animal Park is part of a DSI-dependent ecosystem, we argue for two additional reasons that Sidney Animal Park is a user of DSI on genetic resources: the Park utilized traditional knowledge associated with genetic resources, and the Park valorized genetic resources.

2. *Sidney Animal Park engaged with traditional knowledge associated with genetic resources.*

Across all governing frameworks on the access and benefit sharing of genetic resources, the definition of traditional knowledge is universal: "knowledge held by an indigenous or local community that is relevant for the utilisation of genetic resources."[46] Indeed, the Panthera tribe is closely related to the Royal panther: the Panthera are descendants of the Blytheae who hunted the Royal panther to extinction and the oral tradition of the Panthera includes tales of hunting the Royal panther.[47] Similarly, the record notes that on August 13, 2024, Ridus consulted with the leaders in the Panthera community in Ridus who both consented to, and *supported*, all elements

[44] Convention on Biological Diversity, "Guide to the Cali Fund," https://www.cbd.int/dsi-gr/califund.guide.pdf. (Last visited Nov. 16. 2025)
[45] GBF, Target 13
[46] EU, regulation No 511/2014.
[47] R.7

of the project.[48] At minimum, the broader panther project benefitted from Panthera knowledge of the panther, and downstream organizations like the Sidney Animal Park are users of traditional knowledge underneath the Cali Fund's value-chain approach. Indeed, the product that Sidney Animal Park receives and leverages for commercial purposes can only be maintained, displayed, and bred because of traditional knowledge that supported the scope of the project. This indirect reliance on traditional knowledge on the part of Sidney Animal Park is thus sufficient to classify the Park as a user of DSI on genetic resources in accordance with the broad framing of the Cali Fund, the GBF, and international ABS agreements.

3. Sidney Animal Park valorized genetic resources.

Additionally, Sidney Animal Park profited from its care of the Royal panther, charging $40 extra for visitors to see the panthers.[49] With 50,000 visitors bringing in the extra fee over the first six months—approximately 1/10 of all visitors to the Park—the Park made an extra $2 million dollars from the care of the panthers. Thus, the panther project, without doubt, valorizes and markets an animal product derived from genetic resources, and without DSI on genetic resources, Sidney Animal Park would never have been able to achieve such substantial commercial benefits.

Such commercialization is precisely the commercial contributions the Cali Fund wishes to capture in the DSI value chain, for it asks that parties who commercially rely on digital sequence information contribute to the Fund. If this Court is to find that such valorization is outside the scope of the treaties' object and purpose, such a ruling would have damaging consequences. These include, but are not limited to, undermining the Cali Fund's multilateral mechanism, and encouraging restructuring such that a government can leverage private animal

[48] R.28
[49] R.34

parks or other mechanisms to shield themselves from fiscal responsibility throughout their use of DSI on genetic resources.

4. Sidney Animal Park is a commercial endeavor that meets the Cali Fund thresholds.

Finally, the last question is whether Sidney Animal Park operates in an indicative sector listed in CBD Decision 16/2 and if they meet commercial thresholds necessary for Cali Fund contributions. The answer is, without doubt, yes. The mere fact that CBD Decision 16/2 references the ISIC is irrelevant; the ISIC is only used for parties to take note of for further guidance as the world changes, but it is not binding in any capacity.[50] The Nagoya Protocol has imposed many new ABS regulations on institutions such as botanic gardens, leading to the creation of a new ABS accreditation scheme for botanic gardens through the BGCI.[51] While it may seem unusual, the idea that an animal park, botanic garden, or non-profit institution committed to conservation can be classified as a relevant party to any ABS regulation has strong precedent.

There is no question that Sidney Animal Park would count as a group engaged in animal and plant breeding, which is listed as 1(d) in Enclosure 1 of the CBD as a sector in which DSI is used for commercial activity.[52] To this, the record notes that Sidney Animal Park provides care and habitation for the panthers, in addition to running captive breeding programs for other species.[53] Further, we have already established that the panthers are a product of biotechnology, and the Animal Park is therefore reliant on biotechnology for commercial profits.

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[50] CBD, Enclosure 1, Para 2
[51] Botanical Gardens Conservation International, "Access and Benefit Sharing," https://www.bgci.org/our-work/inspiring-and-leading-people/policy-and-advocacy/access-and-benefit-sharing/ (last visited Nov 17, 2025)
[52] CBD, Enclosure 1
[53] R.35

While Ridus argues the zoo functions as a non-profit and therefore is not subject to the commercial threshold, this logic is deeply erroneous. Ridus contends that CITES is the necessary framework for reviewing the activities of Sidney Animal Park; however, given that the Royal panther is not listed on any of the CITES appendices, CITES cannot be used to legislate an Animal Park that hosts Royal panthers.[54]

Furthermore, CITES is not applicable in a case where the company in question has exceeded each commercial threshold, which therefore overrules any non-fiscal stated purpose the Park may give for the Park's operation under the purpose of the Cali Fund. Considering that Ridus has agreed not to dispute that they have exceeded the commercial thresholds, and Sidney Animal Park meets the commercial thresholds independently, it is unquestionable that Sidney Animal Park is engaged in commercial activity in a sector listed in the CBD and must contribute to the Cali Fund.[55]

[54] R.14
[55] R.45

II. Informed Consent

A. Ridus' conduct violated the prior informed consent provisions of the CBD and the Nagoya Protocol.

1. Anecoyon is classified as a provider country under Article 6.

Because they have provided the fossils of the Royal panther, Anecoyon qualifies as a provider country under the Nagoya Protocol. The Preamble of the Nagoya Protocol refers to provider countries and user countries to define roles when sharing genetic resources.[56] The provider country is defined as the country that has procured and shared the genetic resources. The user country is defined as the country that has accessed and utilizes the genetic resources.[57]

The Royal panther existed in the territories of both Ridus and Anecoyon.[58] However, the territory of genetic resources is not defined by the former territory of an extinct species. Rather, genetic resources are defined as biological material that contains genetic material of value or use—the original genetic resources and its derivatives.[59] The genetic resources at contest in this case should be defined as the specific fossil of the Royal panther which was loaned to Ridus and *its* derivative material.

The Royal panther fossil that Anecoyon loaned to Ridus is the relevant genetic resource. Thus, Anecoyon classifies as a provider country under the Nagoya Protocol.

2. The Nagoya Protocol applies because the genetic materials are still being accessed.

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[56] Preamble,
[57] Elisa Morgera et al., Article 6. Access to Genetic Resources, in Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-Sharing to the Convention on Biological Diversity (Elisa Morgera, Elsa Tsioumani & Matthias Buck eds., Brill 2015), 138.
[58] R.6.
[59] Andean Community Decision 391, supra note 1, at 1.

Whether genetic materials are accessed is determined by the use of those materials, not just the initial access point. While the Nagoya Protocol does not define access, other leading treaties on genetic resources do. The Andean Convention defines access as "the obtaining and use of genetic resources conserved in situ and ex situ, of their by-products and, if applicable, of their intangible components".[60] While Anecoyon shared the fossil with Ridus before the entry of the Nagoya Protocol into force, Ridus has continued to use the fossil and its genetic derivatives in experiments and commercial exploits.[61] Considering that the treaty under which Ridus can access the fossil and its genetic resources regulates the continued use of the fossil and its derivatives by Ridus, the loan agreement between the two countries covers the fossils as well as its derivatives.

3. *The text of Article 6 proscribes the actions taken by Ridus*

Article 6 establishes that "access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources … unless otherwise determined by that Party."[62] Ridus was given access to the fossils of the Royal panther for purposes of education and scientific research.[63] The actions they have taken towards the de-extinction of the Royal panther fall outside the scope of either enumerated purpose.

4. *Article 6 must be read in light of its object and purpose.*

In accordance with VCLT 31(1), a treaty must be read in line with its object and purpose.[64] The purpose of the Nagoya Protocol, and more specifically Article 6, is to protect the provider country.[65] In order to create a global network of research and benefit sharing, provider

[60] *id.*
[61] R.27.
[62] Nagoya Protocol, Art 6.
[63] R.15
[64] VCLT (31,1).
[65] Morgera et al., supra note 1.

countries that may not have the resources for extensive scientific research can collaborate with user countries that do have those capabilities and resources.[66] Ridus has violated this core principle.

5. *Ridus is in violation of the PIC provisions of the Nagoya Protocol.*

Ridus has continued to use the genetic resources provided by Anecoyon. Its continued progress on the de-extinction project relied entirely on the genetic material extracted from Anecoyon's genetic resource.[67] That material thus constitutes a direct derivative of the genetic resources which Anecoyon had provided. Thus, Ridus has continued to use Anecoyon's genetic resources, even after consent had been revoked.

A) The unprecedented process of de-extinction goes beyond scientific research.

Unprecedented actions in developing areas such as de-extinction cannot be subsumed under the category of "scientific research".[68] The extraction of DNA from the Royal panther could be considered scientific research on its own. But the utilization of that DNA to produce new, living organisms that had previously gone extinct goes beyond the bounds of the original loan agreement.

Additionally, PIC requires consent to be informed. PIC requires the user country to inform the provider country of their intended use of the genetic resources.[69] Ridus did not inform

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[66] *id.*
[67] R.27,28
[68] Azevedo & Magalhães-Sant'Ana, 3.4.
[69] Secretariat of the Convention on Biological Diversity Report of the Eighth Meeting of the Ad Hoc Open-Ended Working Group on Access and Benefit-Sharing, U.N. Doc. UNEP/CBD/WG-ABS/8/8 (Nov. 9–15, 2009), 39.

Anecoyon of their plans for de-extinction, nor of its consequences. Anecoyon's consent to scientific research does not extend to this new use.[70]

B) The commercial benefits of the Royal panthers breach the bounds of scientific research.

Ridus is a high-income, high-population country.[71] On the other hand, Anecoyon is a small lower-middle income country.[72] Its partnership with Ridus to learn more about the Royal panther and its genetics does not give Ridus the right to go beyond scientific research and unilaterally commercialize their discoveries.

Ridus has chosen to pursue a commercial route. The Sidney Animal Park and Ridus have gained monetary benefits not initially disclosed to Anecoyon, or shared.[73] Even if this court finds that their initial forays into genetic modification could be considered scientific research, the addition of an explicitly commercial element into their use of Anecoyon's genetic resources cannot constitute scientific research. Because the two Royal panthers themselves are derivatives of Anecoyon's fossil, the commercial benefits from ticket sales to see them constitute a breach of the original loan agreement, as well as the Nagoya Protocol Article 6.

6. The actions taken by Ridus have violated the PIC provisions and participation provisions of the Convention on Biological Diversity.

Article 15(5) of the CBD states that "access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources".[74] While Article 15(5)

[70] R.16,28
[71] R.4,5
[72] R.3
[73] R.34
[74] CBD Art. 15

has not been put into use before, in the discussions of the working group on Access and Benefit sharing inthe CBD, access to genetic resources is defined as a continuous process.[75] In order for consent to be informed, the provider country must know the intended use, monetary benefits, and third parties involved in the use of their resource.[76] Access to a genetic resource can be revoked when a country breaks the mutually agreed terms.[77] Ridus did not clearly inform Anecoyon of the intended use of genetic resources, nor of the monetary benefits or third parties involved.[78] Thus, Ridus is continuing to access Anecoyon's genetic resources without PIC, breaking the terms of Article 15(5) of the CBD.

Furthermore, the actions taken by Ridus after creating the new "Royal panthers", which are in and of themselves a derivative of Anecoyon's genetic resources, are undeniably commercial in nature. Their collaboration with the Sidney National Park has already brought in $4,000,000 simply because of the increased pricing to view the new Royal panthers.[79] By using these derivatives without any concern for the required PIC of Anecoyon, Ridus has broken Article 15(5) of the CBD. Thus, even if this court finds that the Nagoya Protocol is not applicable, Ridus has broken its obligations to seek PIC and thus violated the CBD.

Ridus has violated the CBD's PIC provisions through its actions surrounding derivatives of the fossils, as well as its total exclusion of Anecoyon throughout the 'de-extinction' process. Thus, even if it is found that the Nagoya Protocol is not applicable, Ridus remains beholden to its obligations under the CBD, which it has broken.

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[75] Secretariat of the CBD [79].
[76] Secretariat of the Convention on Biological Diversity, *Access and Benefit-Sharing: Practical Experiences and Lessons Learned* (CBD Technical Series No. 51, 2009, supra note 52, at page 135.
[77] Secretariat of the CBD [41,4].
[78] R.28-31
[79] R.34

B. Anecoyon's refusal to consent based on its objections to de-extinction runs in line with the CBD's objectives.

1. The main objectives of the CBD center around conservation and benefit sharing.

Pursuant to the Preamble of the Convention on Biological Diversity, the main objectives of the CBD are "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising from the utilisation of genetic resources".[80] The actions taken by Anecoyon fall in line with these objectives.

2. Anecoyon's objections center around the conservation of biological diversity

Anecoyon's refusal to consent is based on the main objectives of the Convention on Biological Diversity—especially the conservation of biological diversity. Anecoyon's desire to maintain biological diversity lies at the heart of its refusal. From the beginning of discussions with Ridus over their secretive de-extinction process, Anecoyon cited its concerns about the effects on the animals being used and the ecological consequences.[81] Both of these concerns were well-founded.

For the new Royal panthers themselves, there are both environmental and genetic concerns. The lack of a natural environment for these panthers and the necessity of human intervention prevents the animals from learning essential survival skills, preventing them from truly living in the wild.[82] Their genetic modifications can also exacerbate these problems, as certain modifications could have drastic effects later in life.[83]

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[80] *Id*.
[81] R.18
[82] Azevedo A, Magalhães-Sant'Ana M, 3.1
[83] Azevedo A, Magalhães-Sant'Ana M, 3.1.

The reintroduction of a long-extinct species into an ecosystem *will* have adverse effects on that ecosystem. While these effects can be mitigated when an animal has newly gone extinct, releasing a completely new apex predator into an environment upsets the balance of that ecosystem for all existing wildlife.[84] Because of the proximity between Anecoyon and Ridus, the adverse effects of re-wilding these new Royal panthers in Ridus will have similar effects in Anecoyon. Thus, Anecoyon has a valid, vested interest in the conservation of its own biological diversity and in ending the de-extinction program.

The de-extinction project for these new Royal panthers presents a threat not only to the animals themselves but to the wider ecosystem and political climate around extinct and endangered animals. Anecoyon's refusal to allow a new subspecies of panther to save the biological diversity already present in the peninsula does not work against the CBD; rather, it enforces its objectives.

A. Ridus has not shown concern for existing species, nor the existing ecosystem.

Ridus's breeding and eventual reentry into the wild of the Royal panther can have unforeseen consequences no matter its intention. In return for the multiple concrete concerns which Anecoyon presents, Ridus states that their de-extinction technology could be helpful for threatened or endangered species.[85] T However, helping threatened or endangered species is not an objective of the genetic modification process. In attempting to rewild the new 'Royal panther'

[84] Sandler R. The ethics of reviving long extinct species. Conserv Biol. 2014 Apr;28(2):354-60. doi: 10.1111/cobi.12198. Epub 2013 Dec 20. PMID: 24372907, 358.
[85] R.19

Ridus goes beyond any potentially helpful effects for the conservation of biological diversity and instead has a greater chance to harm those breeds than help them.

Furthermore, they only address the concerns Anecoyon has for the individual animals involved in the breeding process. This cannot meet the standards set by the CBD. The potential catastrophic effects when introducing a completely new organism into an ecosystem affect more than just the individual animals directly involved. Adding new species cannot be an aim of conserving the biological diversity already present, and Ridus's actions can only serve to harm the current biodiversity in the region.

B. the creation of a new species falls beyond the bounds of conservation.

Ridus has firmly maintained that the purpose of their experiments is the de-extinction of the Royal panther. This purpose, while at best it may work towards future biological diversity, cannot work towards the conservation of current biological diversity. Ridus has not made any claims that they are working towards conservation, only baseless claims that Anecoyon is working against conservation of biological diversity.[86] As such, the efforts towards de-extinction do not constitute conservation of biological diversity. Anecoyon's refusal to consent works in line with the CBD, not against it.

3. Ridus has shown an unwillingness to cooperate in fair and equitable benefit sharing.

Fair and equitable sharing of benefits under both the CBD and the Nagoya Protocol focuses on the sharing of research, resources, and any commercial benefits with the provider

[86] R.19,21

country of the genetic resources.[87] In line with the goal of increased global cooperation, the object and purpose of fair and equitable sharing under the CBD focuses on incentivizing poorer and smaller provider countries to cooperate with the wealthier, bigger countries.[88]

Ridus has worked against fair and equitable sharing of benefits, as they have not shared any meaningful technology or commercial rewards with Anecoyon. Thus, Anecoyon's refusal to consent works to support the CBD's objectives.

a. Ridus has benefitted commercially.

Ridus does not contest that there have been financial gains from the display of the Royal panthers. The commercial success of Ridus has come as a direct result of Anecoyon's genetic resources and their willingness to share those resources.

Through their unwillingness to share this commercial success with Anecoyon, Ridus is not only working against fair and equitable sharing of benefits in this case, but also for future potential collaborations between similar countries. Through their selfishness, Ridus is not only jeopardizing their relationship with Anecoyon, but future global cooperation. This works directly against the object and purpose of the CBD. Thus, Anecoyon's refusal to cooperate with Ridus works towards this main objective of the CBD, not against it.

b. Anecoyon has not received the research which produced the de-extinction technology.

[87] Elisa Morgera et al., *Objective*, in Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-Sharing to the Convention on Biological Diversity 48, 48–58 (2015), 52.
[88] Morgera et al., supra note 6.

Anecoyon has not received the research or results of Ridus's experiments in de-extinction. Anecoyon learned of the de-extinction process at the same time as the general public learned that the National Museum of Ridus had already extracted the DNA and started the process.[89] Regardless of any prior cooperation, it is clear that the National Museum of Ridus did not share its research or experimental processes with Anecoyon regarding de-extinction.

Furthermore, as Ridus has unilaterally decided to continue using Anecoyon's genetic resources without their consent, it is reasonable to assume that they have halted any communication with Anecoyon about results or benefits stemming from their research. This hostility and lack of cooperation works directly against the objective of fair and equitable sharing of benefits.

4. Anecoyon has worked towards the objectives of the CBD.

The steps taken by Anecoyon to stop the so-called de-extinction of the Royal panthers works with the objectives of the CBD. By revoking access to their genetic resources, Anecoyon attempted to conserve the biological diversity of their peninsula and to ensure that they received a fair and equitable share of the benefits. Ridus has ignored this revocation and has continued down a path which could threaten destruction of biodiversity and prevent Anecoyon from receiving its fair share of benefits. Thus, Anecoyon is working towards the objectives of the CBD, while Ridus is still working counter to the CBD.

[89] R.16.

Conclusion

Applicant, Anecoyon, respectfully requests the Court to adjudge and declare that:

(1) DSI used for de-extinction activities is "biotechnology" for purposes of the CBD and the Nagoya Protocol.

(2) The Sidney Animal Park is a user of DSI on genetic resources for purposes of CBD Decision 16/2 and the Sidney Animal Park is engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2.

(3) Ridus's conduct did not comply with prior informed consent provisions of the CBD and the Nagoya Protocol, to the extent they are applicable.

(4) Anecoyon's refusal to consent based on its objections to de-extinction does not run counter to the CBD's objectives.

Respectfully submitted,

AGENTS FOR APPLICANT