TEAM 88

THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE 30TH STETSON INTERNATIONAL ENVIRONMENTAL

MOOT COURT COMPETITION

THE CASE CONCERNING PRIOR INFORMED CONSENT AND BENEFIT SHARING IN THE CONTEXT OF DE-EXTINCTION

ANECOYON

(APPLICANT)

v.

RIDUS

(RESPONDENT)

MEMORIAL FOR THE APPLICANT

2025-2026

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TABLE OF ACRONYMS

Acronym	Full Term
CBD	Convention on Biological Diversity
PIC	Prior Informed Consent
DSI	Digital Sequence Information
ABS	Access and Benefit-Sharing
COP	Conference of the Parties
SAP	Sidney Animal Park
ICJ	International Court of Justice
VCLT	Vienna Convention on the Law of Treaties
UNFCCC	United Nations Framework Convention on Climate Change
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
LMO	Living Modified Organism
CRISPR	Clustered Regularly Interspaced Short Palindromic Repeats
USD	United States Dollar

QUESTIONS PRESENTED

I. Regarding prior informed consent:

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

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

II. Regarding benefit sharing:

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

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

STATEMENT OF FACTS

1) In 1901, the most complete Puma royali fossil was discovered in the province of Anecoyon. In 2009, Anecoyon's Ministry of Natural Resources loaned this fossil to the National Museum of Ridus (another state) under a 20-year agreement exclusively for educational and scientific research purposes.

2) Both Anecoyon and Ridus ratified the CBD in 1993 and the Nagoya Protocol in 2015, thereby accepting the international obligation to obtain Prior Informed Consent (PIC) and ensure equitable benefit-sharing before accessing or utilizing another Party's genetic resources.

3) In August 2020, the National Museum of Ridus, acting as a State organ, extracted DNA from the Puma royali fossil. This DNA was used to create Digital Sequence Information (DSI) with the intention of reconstructing the extinct species through modern biotechnology, including CRISPR gene-editing.

4) On September 27, 2022, Anecoyon formally objected via diplomatic note, reminding Ridus that it is the country of origin of the genetic resource and that the extraction and use of DSI without PIC violates both the CBD and the Nagoya Protocol. Ridus, however, dismissed the concern, arguing that the Protocol does not apply retroactively and that extinct species fall outside the definition of "genetic resources."

5) The Applicants emphasize that the relevant use of the genetic material occurred long after the entry into force of the Nagoya Protocol, thereby making its provisions applicable. Even if the fossil was loaned in 2009, the subsequent DNA extraction, sequencing, and use of DSI constitute new and independent actions requiring fresh consent.

6) In December 2023, Anecoyon enacted national legislation prohibiting the use of any of its genetic resources or derivatives for desextinction projects without prior consent. Despite this, Ridus continued the project and contracted Salols Co., a private company, to recreate Puma royali individuals using DSI derived from Anecoyon's fossil.

7) On December 19, 2024, two genetically recreated panthers—Ixchel and Itzamná—were born. Under Ridus law, these animals became property of the State and were transferred to the Sidney Animal Park (SAP).

8) SAP now exhibits the revived panthers as part of its attractions. With over one million annual visitors and tickets priced at 119 USD, plus an additional 40 USD viewing fee for the Puma royali exhibit, the Park has become one of the largest tourist destinations in Ridus.During the first six months alone, 50,000 visitors paid the premium fee to view the panthers.

9) The Respondents admitted that SAP generates approximately 130 million USD in annual revenue, surpassing the financial thresholds established in CBD Decision 16/2 (Cali Decision)

for entities benefiting from DSI use. Nevertheless, neither Anecoyon nor the Cali Fund have received any benefit-sharing contributions.

10) Applicants emphasize that Decision 16/2 requires all users of DSI in sectors benefiting commercially or indirectly from genetic information to share benefits, irrespective of their legal status. SAP's use of the revived species as paid attractions constitutes a commercial activity within the meaning of the Decision's.

11) Furthermore, the Applicants note that Anecoyon was never consulted. This omission violates Article 12 of the Nagoya Protocol, which obliges Parties to respect traditional knowledge associated with genetic resources.

12) Anecoyon's consistent diplomatic efforts to resolve the dispute peacefully failed. Despite returning the fossil, Ridus refused to halt the desextinction project or to implement benefit-sharing mechanisms.

13) Finally, Ridus explicitly acknowledged before negotiations ended that it would facilitate benefit-sharing "if an international tribunal determines that SAP is a user of DSI engaged in commercial activity."

SUMMARY OF PLEADINGS

I.

Firstly, the Court must declare that Ridus violated its obligations under the Convention on Biological Diversity (CBD) and the Nagoya Protocol by undertaking and continuing de-extinction activities without obtaining Anecoyon's Prior Informed Consent (PIC).

Secondly, the Court must find that Ridus violated the precautionary principle by proceeding with a project involving well-established ecological and ethical risks, risks that were expressly brought to its attention by Anecoyon while disregarding Anecoyon's demands to abandon the project and return the fossil.

II.

The Court must declare that Ridus failed to comply with its obligations concerning fair and equitable benefit-sharing under Article 15(7) of the CBD, the Nagoya Protocol, and CBD Decision 16/2.

On the other hand, the Court must declare that Ridus's contention that no benefits were generated is incompatible with the economic, media, and scientific value associated with the revived panthers. Moreover, Ridus's refusal to acknowledge the DSI-based nature of the

organisms contradicts the CBD's definition of biotechnology and established interpretations under Decision 16/2.

Finally, as a substantive matter, the Court must declare that Anecoyon is entitled to remedies as the sovereign provider of the *Puma royali* genetic resources and DSI, and that Ridus's continued assertion of ownership over the revived animals constitutes an ongoing breach of its treaty obligations and of the CBD's conservation-oriented objectives.

PLEADINGS

I. Regarding prior informed consent:

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

- Effective Application of the CBD and the Nagoya Protocol Regarding Consent

The effective application of the CBD and the Nayoya protocol on consent is justified first and foremost by the joint ratification of both states in 1993 and 2015, respectively. The CBD created obligations in 1993, and according to paragraph 9 of Annex A, it was not until 2009 that the Anecoyon Ministry of Natural Resources loaned the specimen for a 20-year period to the *National Museum of Ridus*. *The loan agreement stated that the loan was "for the purposes of education and scientific research."*

Additionally, although the Nagoya Protocol came into force in 2015, DNA extraction and the start of the project was in 2022. According to paragraph 14 of Annex A, although the fossil was loaned prior to the Nagoya Protocol's entry into force, it is clear that the extraction of the DNA and the use of the DSI—*the "utilization of genetic resources,* is occurring after its entry into force.

- <u>The absence of prior informed consent from Anecoyon</u>

According to paragraph 15 of Annex A, Article 6 of the Nayoya Protocol is cited, which establishes that "In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party". In that order and according to paragraph 5 -12, Anecoyon is the country of origin and for that reason, the PIC was necessary and therefore the requirements of Article 6 of the Nagoya Protocol should have been complied with Pursuant to paragraph 1 above, each Party requiring prior informed consent shall take the necessary legislative, administrative, or policy measures, as appropriate, to:

(a) Provide for legal certainty, clarity, and transparency of their domestic access and benefit-sharing legislation or regulatory requirements.

(b) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources.

(c) Provide information on how to apply for prior informed consent.

(d) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time.

(e) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms and notify the Access and Benefit-Sharing Clearing-House accordingly.

(f) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources.

(g) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, inter alia: (i) A dispute settlement clause; (ii) Terms on benefit-sharing, including in relation to intellectual property rights; (iii) Terms on subsequent third-party use, if any; and (iv) Terms on changes of intent, where applicable.

Ridus claims that it obtained the PIC, saying that it obtained it without referring to the seven essential requirements mentioned above, which if obtained would have had to be satisfied.

- The existence of a loan agreement that did not authorize de-extinction activities

According to Article 12 of the CBD, scientific research is understood to mean research that contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, in accordance with the decisions taken by the Conference of the Parties following the recommendations of the subsidiary body on scientific, technical, and technological advice; and in accordance with the provisions of Articles 16, 18, and 20, they shall promote the use of scientific advances in research on biological diversity for the development of methods of conservation and sustainable use of biological resources, and shall cooperate in this area.

According to section 9 of Annex A, it was established in 2009 that the loan agreement would be for educational and scientific research purposes. However, section 10 of Annex A contradicts the main purpose of the loan, given that Ridus intended to create a Royal panther reference genome and use the digital sequence information for the "de-extinction" and reintroduction of Royal panthers in protected areas in Ridus as part of a (rewilding project.) Completely ignoring that the introduction of long-extinct species to the landscape may have unknown ecological consequences. Furthermore, de-extinction projects can create a moral hazard, undermining public and political support for conservation of existing species.

Returning to the main topic, paragraph 19 of the annex A states that CBD Article 15.2 only refers to providing access to genetic resources for "environmentally sound uses," but a de-extinction project is not a sound use, and it cannot be considerate as a novel use. In such a way that the main purpose of the loan, which was educational and scientific research, cannot be ignored, which is equivalent to environmentally sound uses and not to the final purpose of de-extinction project

- The de-extinction project violates the Precautionary Principle

The precautionary principle enshrined in the Rio Declaration on Environment and Development (1992) establishes in its principle number 15 that "In order to protect the environment, States should widely apply the precautionary approach in accordance with their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Subsequently, in the same year, the CBD referred to the principle again in its preamble, through the following statement: "Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat."

Coincidentally, in the same year, the CBD referred to the principle again in its preamble, through the following statement: “Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.” Coincidentally, in the same year, the UNFCCC ruled on the principle as it applies to climate change, as did the Rotterdam Convention in 1998 regarding pesticides and hazardous chemicals.

Two years later, the Cartagena Protocol on Biosafety was adopted, which is closely related to the case in question, as it reaffirms the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development and specifies it in Article 1: "In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of

protection in the field of the safe transfer, handling, and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and focusing specifically on transboundary movements."

There is no doubt about the transcendental importance of applying the precautionary principle in this specific case, as it obliges Ridus to take measures despite the lack of scientific evidence regarding the environmental damage that the project could cause. Violation of the precautionary principle could affect other species, as evidenced in the case "Whaling in the Antarctic (Australia v. Japan; New Zealand intervening), Judgment, March 31, 2014 (ICJ, Case No. 148), in which the ICJ demanded further evidence that cetacean catches in Antarctica were necessary and proportionate to produce scientific results. Consequently, cetacean populations in the Antarctic area were prevented from dying because of the implementation of the JARPA II program, which could be assimilated to the de-extinction program.

The foregoing is reaffirmed in paragraph 12 of Annex A of the specific case, because “On 27 September 2022, the following diplomatic note was forwarded to the Government of Ridus: The Embassy of Anecoyon presents its compliments to the Government of Ridus and wishes to convey its ethical, policy, and legal concerns about the so-called “de-extinction” efforts related to the Royal panther. The risks of such actions are grave. Many commentators have noted animal welfare harms likely to be associated with de-extinction projects. The introduction of long-extinct species to the landscape may have unknown ecological consequences. Furthermore, de-extinction projects can create a moral hazard, undermining public and political support for conservation of existing species.”

- Anecoyon is clearly the country of origin of the genetic resources

Based on the CBD, the importance of defining the concept of country of origin was established, since it refers to “the country that possesses those genetic resources in situ.” Similarly, the Nagoya Protocol, ratified by Anecoyon and Ridus, establishes in Article 6 that the category “country of origin” should be understood as "the exercise of sovereign rights over natural resources, and subject to national legislation or regulatory requirements on access and benefit sharing, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing those resources, which is the country of origin of those resources or a Party that has acquired the genetic resources in accordance with the Convention, unless that Party determines otherwise."

With clarity on the concept and its characteristics, the importance of understanding it in this specific case is analyzed. Based on the analysis of a similar case, the “Hoodia case,” there is evidence of the absence of PIC in relation to access to genetic resources located in the country of origin, the sovereignty of States over their genetic resources, and the obligation of fair and equitable benefit sharing contemplated in Article 15 of the CBD.

On the other hand, in the present case, it is established in sections 5-9-12 of Annex A, respectively. In the first, even though fossils and bone remnants of the species have been found in Anecoyon and Ridus, the best-preserved specimens have been found in Anecoyon, due to geological and climatic conditions. In the second, it is established that in 1901, the best-preserved fossil of the Royal panther was discovered in the Kingdom of Mammuthus in the province of Anecoyon, in

what is now the territory of Anecoyon. In the third, it is stated that Anecoyon is the "country of origin of genetic resources," pursuant to the Nagoya Protocol.

Thus, it is concluded that Anecoyon is the State of origin according to the requirements of the Nagoya Protocol and the CBD for a State to be considered a "Country of origin."

B. Anecoyon's refusal to consent based on its objections to de-extinction is in accordance with the objetives of the CBD.

Anecoyon's actions are fully supported by the principle of permanent sovereignty over natural resources, recognized in Article 15.1 of the Convention on Biological Diversity (CBD), which establishes that access to genetic resources "shall be subject to the national legislation of the country of origin." In the legitimate exercise of this sovereignty, Anecoyon adopted in December 2023 domestic legislation that expressly prohibits the use of genetic resources or their derivatives for the purpose of de-extinction. This measure does not constitute a restriction contrary to the Convention, but rather the materialization of its sovereign right and its duty to ensure the sustainable use of its biodiversity, pursuant to Article 3 of the CBD, which imposes an obligation on States to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or to areas beyond national jurisdiction.

Article 15.2 of the CBD provides that access to genetic resources shall be granted only for

"environmentally sound uses." De-extinction, due to its biotechnological nature and its high degree of scientific uncertainty, does not constitute an environmentally sound use, as it does not contribute to the conservation or sustainable use of biodiversity. As stated in the study by Valdez, Kuzma, Cummings, and Peterson (2019), published in the
Journal of Responsible Innovation, environmental governance experts conclude that de-extinction "is more likely to generate risks than benefits" and may "undermine existing conservation efforts by creating moral hazard" through the perception that extinction is reversible. The CBD establishes as its objectives the conservation of biological diversity and the sustainable use of its components.

Anecoyon's conduct is also grounded in the precautionary principle, enshrined in Principle 15 of the 1992 Rio Declaration on Environment and Development, which provides that in cases of threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. The recreation of extinct species through genetic engineering constitutes a high-risk ecological and ethical activity, with unpredictable impacts on contemporary ecosystems, as warned by Valdez et al. (2019). Consequently, Anecoyon's refusal represents a legitimate application of the precautionary principle, aimed at preventing irreversible harm to environmental balance and global biodiversity.

Anecoyon also acted in accordance with the principle of good faith, recognized in Article 26 of the Vienna Convention on the Law of Treaties, which obliges States to perform their treaty commitments in a manner consistent with the object and purpose of the agreement. During its

negotiations with Ridus, Anecoyon promptly communicated its refusal and requested the return of the fossil, demonstrating transparency and cooperation. Ridus, on the other hand, by continuing to sequence and use the genetic material despite Anecoyon's express objection, engaged in conduct contrary to good faith and violated the duty to respect the sovereignty of the State of origin of the genetic resource, in contravention of Article 15.5 of the CBD, which requires the prior informed consent of the provider country.

Anecoyon's refusal, in addition to being legally valid, fully aligns with the object and purpose of the CBD The de-extinction project promoted by Ridus does not represent a sustainable or environmentally sound use of genetic resources, lacks sufficient scientific grounding, and contradicts the principles of precaution, sovereignty, and good faith that govern international environmental law. Therefore, Anecoyon acted in full compliance with its rights and obligations under the Convention on Biological Diversity

II. Regarding benefit sharing:

A. Digital Sequence Information used for de-extinction activities is “biotechnology” for purposes of the CBD and the Nagoya Protocol.

According to Article 2 of the Convention on Biological Diversity, "biotechnology" means any "technological application that uses biological systems, living organisms or their derivatives to create or modify products or processes for specific purposes" hence the digital sequence information (DSI) used by Ridus for the genetic reconstruction of the *Royal Panther* fully fits this definition, as it is the digital coding of the DNA and RNA of an organism used to modify the genetic characteristics of another species using genetic engineering tools such as CRISPR, therefore, de-extinction activities constitute a clear example of biotechnological application subject to the legal framework of the CBD and the Nagoya Protocol on Access and Benefit-sharing (ABS).

In accordance with Article 5 of the Nagoya Protocol, the benefits derived from the utilization of genetic resources including their derivatives and associated digital information must be shared in a fair and equitable manner, in this context, Decision 16/2 of the Conference of the Parties (COP16) operationalized the Cali fund as a multilateral mechanism to ensure the equitable sharing of benefits arising from the use of DSI, this decision provides that "all users of digital sequence information on genetic resources shall share the benefits arising from their use in a fair and equitable manner", the commitment publicly assumed by Ridus at COP16,

declaring that "it will require commercial entities in its jurisdiction to contribute to the Cali fund", generates an international obligation derived from the principle of good faith (Vienna Convention, art. 26), and therefore its failure to comply constitutes a violation of its multilateral commitments.

The de-extinction project carried out by Salols Co. and the Sydney Animal Park, with authorization from the State of Ridus, involved a commercial use of the DSI, since it generated direct economic benefits through the exhibition of the animals created and the sale of additional tickets to the public, such income constitutes an economic use derived from the use of genetic resources, which activates the benefit-sharing obligations provided for in Article 15.7 of the CBD and Article 6 of the Nagoya Protocol, the classification of the project as a "non-commercial" activity is untenable in the face of the evidence of profit and the recognition that the list of benefited sectors included in Decision 16/2 is illustrative and not exhaustive, expressly including the biotechnology sector and scientific and technical services linked to the use of DSI.

Moreover, Ridus' refusal to implement the benefit-sharing mechanism contradicts the objective of international fairness enshrined in Article 1 of the CBD and violates the principle of cooperation as set out in Article 5 of the Charter of the United Nations and reiterated in the preamble to the Nagoya Protocol, failure to comply with these obligations weakens the multilateral regime of access and benefit-sharing and undermines trust between States In accordance with the practice of COP16 and contemporary environmental doctrine, the

contribution to the Cali Fund constitutes an essential component of the principle of benefit-sharing and an instrument to materialize global environmental justice.

Consequently, the digital sequence information used in the de-extinction project constitutes biotechnology under the CBD and the Nagoya Protocol, generating binding benefit-sharing obligations, Ridus, by omitting its contribution and denying the biotechnological nature of the project, acts in contravention of its international commitments and the principle of good faith, therefore, it is for the Court to declare that the ISD used for the de-extinction of the *Royal Panther* falls within the material scope of application of both instruments and that Anecoyon is entitled to a fair and equitable share of the resulting profits

B. 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.

- <u>The Sidney Animal Park qualifies as a user of DSI under CBD Decision 16/2</u>

Article 15 of the Convention on Biological Diversity (CBD) establishes that Parties shall ensure the fair and equitable sharing of benefits arising from the utilization of genetic resources. The Nagoya Protocol, in turn, defines "utilization of genetic resources" as "to conduct research and development on the genetic and/or biochemical composition of genetic material, including through the application of biotechnology."

To adapt this framework to modern technological realities, the Conference of the Parties at its sixteenth meeting (COP16) adopted Decision 16/2 — also known as the Cali Decision — which expanded benefit-sharing obligations to include Digital Sequence Information (DSI).

This concept refers to "the digital representation of genetic material, such as DNA and RNA sequences and associated data, used in research, innovation, or commercialization". The Decision further clarifies that all users of DSI, whether public or private, for-profit or non-profit, are required to contribute to the Cali Fund when they "benefit directly or indirectly from the use of such information."

From a doctrinal perspective, international environmental law interprets the notion of user in a broad and inclusive manner. It encompasses not only the primary entities that extract or sequence genetic data, but also downstream actors who obtain economic, scientific, or reputational advantages from its use. Professor Elisa Morgera explains that "the user of genetic resources is not limited to the extractor but includes any entity participating in or benefiting from the utilization chain" [1] . This interpretation reflects the teleological approach of the CBD — ensuring that those who benefit from biodiversity contribute to its protection.

The Sidney Animal Park (SAP) clearly benefits from the Digital Sequence Information (DSI) that comes from Anecoyon's genetic resources. The revived panthers, Ixchel and Itzamná, exist only

[1] Morgera, Elisa. 2019. "Under the Radar: Fair and Equitable Benefit-Sharing and the Human Rights of Indigenous Peoples and Local Communities Connected to Lands, Territories and Resources." The International Journal of Human Rights 23 (2): 1–25.

because of DSI extracted from Puma royali fossils originally belonging to Anecoyon. Using this genetic data, the National Museum of Ridus and Salols Co. applied CRISPR-Cas9 and synthetic biology techniques to bring the species back to life.[2] Once revived, the panthers were transferred to SAP, where they are now exhibited to the public as one of the park's most profitable attractions. By exhibiting living animals that are direct biological expressions of digital genetic data, the Sidney Animal Park is clearly using DSI within the meaning of CBD Decision 16/2. This Decision specifically explains that "use of DSI includes its application in products, services, research, innovation, and other activities that generate benefits." [3]

Therefore, when SAP displays these revived panthers, it is engaging in the use of DSI and automatically triggering the obligation to share the resulting benefits. Even though the park did not perform the original sequencing itself, it still plays a crucial role in the later stages of using and profiting from that genetic information. By turning the DSI-derived panthers into a paid attraction, the Sidney Animal Park transforms what started as a scientific breakthrough into both an economic and reputational asset. With over a million visitors each year and additional fees for viewing the revived panthers, SAP clearly gains financial and public value from Anecoyon's genetic heritage — exactly the type of downstream benefit that Decision 16/2 was meant to address.

This interpretation aligns with Article 15(7) of the Convention on Biological Diversity (CBD), which requires States to ensure the fair and equitable sharing of benefits arising from the use of

[2] Record of the case

[3] Conference of the Parties to the Convention on Biological Diversity, "Decision 16/2: Digital Sequence Information on Genetic Resources," COP 16

genetic resources, including their derivatives and products. Since Digital Sequence Information (DSI) is essentially a digital form of genetic material, it naturally falls within this framework. Under Article 31 of the Vienna Convention on the Law of Treaties (VCLT), treaties must be understood in light of their object and purpose.[4]

The CBD's preamble makes it clear that conserving biodiversity must go hand in hand with fairness and equity in benefit-sharing. The International Court of Justice, in Whaling in the Antarctic (Australia v. Japan), confirmed that environmental treaties must be interpreted dynamically to make sure their conservation goals are effectively achieved. [5]

Likewise, the Cali Decision (Decision 16/2) was adopted precisely to guarantee that "those who benefit from DSI contribute to global biodiversity protection. SAP's activities fit perfectly within this purpose.

Finally, Ridus's failure to ensure benefit-sharing is a clear breach of its international obligations. By allowing SAP to profit from DSI derived from Anecoyon's genetic resources without guaranteeing any equitable return, Ridus violated Article 15(7) of the CBD, Article 5(1) of the Nagoya Protocol, and Annex 3 of Decision 16/2. This omission amounts to an internationally wrongful act under the Articles on State Responsibility, since Ridus failed to take the necessary steps to regulate entities within its jurisdiction engaged in commercial use of foreign genetic resources.

[4] Vienna Convention on the Law of Treaties, 1969, art. 31, 1155 U.N.T.S. 331

[5] International Court of Justice, Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014, 226 (March 31, 2014).

In conclusion, the Applicants respectfully submit that the Sidney Animal Park (SAP) clearly qualifies as a user of Digital Sequence Information (DSI) within the meaning of the Convention on Biological Diversity and CBD Decision 16/2. The Park directly benefits from Anecoyon's genetic resources, as its entire exhibit and source of revenue depend on organisms derived from that DSI. Moreover, it utilizes those DSI-based organisms for economic and reputational gain, positioning itself as a downstream user precisely within the scope that Decision 16/2 seeks to regulate. By failing to ensure the fair and equitable sharing of benefits resulting from this use, Ridus has breached its international obligations under the CBD and the Nagoya Protocol, undermining the very principles of justice and sustainability that the global biodiversity regime was designed to protect.

- <u>The Sidney Animal Park engages in commercial activity within a covered sector</u>

The rule governing this issue is that the determination of commercial activity under international environmental law depends on the economic substance of the conduct rather than the entity's legal form or declared purpose. Neither the Convention on Biological Diversity (CBD) nor the Nagoya Protocol expressly defines "commercial activity"; however, CBD Decision 16/2 (Cali Decision) clarifies its scope by identifying sectors that benefit directly or indirectly from the use of Digital Sequence Information (DSI), such as biotechnology, pharmaceuticals, cosmetics, information services, and scientific and technical services. Furthermore, the same decision establishes financial thresholds—entities with assets exceeding 20 million USD, sales above 50 million USD, or profits greater than 5 million USD—as objective indicators of commercial engagement. Consistent with

this framework, international jurisprudence confirms that commercial activity must be understood in functional rather than formal terms. International practice and scholarship treat "commercial activity" as conduct that produces or provides goods or services for remuneration, judged by its economic substance rather than an entity's formal status.

For example, the WTO Appellate Body in Canada [6]— Renewable Energy addressed whether purchases and resales were commercial in character, treating the economic reality of resale and market advantage as decisive. Equally, many leading doctrinal authorities explain that the relevant test is functional: whether the act yields financial gain or market advantage, not whether the actor is formally public, private, or non-profit [7]

Similarly, the International Court of Justice, in Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), recognized that an act may be considered commercial when it results in financial gain or provides a market advantage, regardless of the actor's underlying intent or legal form[8]. This understanding reflects the Court's emphasis on the economic substance of activities, rather than their formal characterization. As James Crawford notes in Brownlie's Principles of Public International Law [9], the case has become a leading authority for the proposition that the commercial nature of an act is determined by its economic effects and context, not merely by its legal structure or the identity of the actor involved.

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[6] World Trade Organization, Certain Measures Affecting the Renewable Energy Generation Sector, Appellate Body Report, Canada . WT/DS412/AB/R (May 6, 2013),

[7] Yang, Xiaodong. "Commercial Activity." Chapter. In State Immunity in International Law, 75–131. Cambridge Studies in International and Comparative Law. Cambridge: Cambridge University Press, 2012.

[8] International Court of Justice, Barcelona Traction, Light and Power Co. (Belgium v. Spain), ICJ Reports 1964-,

[9] James Crawford, Brownlie's Principles of Public International Law, 9th ed. (Oxford: Oxford University Press, 2019), 491.

Taken together, these authorities affirm that any entity deriving economic benefit—directly or indirectly—from the use of DSI qualifies as engaging in commercial activity and is therefore subject to the corresponding benefit-sharing obligations.

The record before the Court demonstrates that the Sidney Animal Park (SAP) derives considerable economic benefit from activities directly linked to the use of Digital Sequence Information (DSI). Each year, more than one million visitors attend the park, making it one of Ridus's largest tourist destinations. The admission fee of 119 USD per adult, coupled with an additional 40 USD charge to view the Puma royali exhibit, has generated substantial income. In the first six months alone, over 50,000 visitors paid the premium fee, and Ridus itself has admitted that the Park's total annual revenue reaches approximately 130 million USD. These figures far exceed the financial thresholds established under Annex III of CBD Decision 16/2, which set out the quantitative criteria for identifying commercial users of DSI.

Beyond its financial success, SAP also engages in scientific and technical services by maintaining and exhibiting genetically revived species. Through its partnership with Salols Co., it participates in the broader biotechnology sector, a field explicitly recognized in Annex I of Decision 16/2 as one that directly benefits from the use of DSI. This dual engagement—scientific and economic—demonstrates that SAP's operations are firmly embedded in the global DSI utilization framework envisioned by the Convention and its supplementary instruments.

Ridus's contention that Sidney Animal Park's nonprofit status excludes it from being considered a commercial actor cannot be sustained under international law. The distinction between nonprofit

and for-profit entities is irrelevant where an organization's activities produce economic value or involve the exchange of goods or services for remuneration.

As recognized in the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct [10] and in various reports by UNCTAD, nonprofit institutions may engage in commercial operations when their activities generate substantial income or economic returns. This reflects a broader understanding of commercial conduct in international economic law, where the nature and impact of an activity—rather than the legal status of the actor—determine its commercial character. Such recognition is particularly relevant in contexts involving responsible business practices, investment frameworks, and cross-border economic activities. Accordingly, even if SAP reinvests its revenue in conservation efforts, this reinvestment does not negate the inherently commercial nature of its conduct.

From a practical perspective, the economic reality is that SAP has monetized biodiversity by transforming a scientific breakthrough—the de-extinction of Puma royali—into a profitable public attraction. Visitors pay for access to a genetic innovation that exists only because of DSI derived from Anecoyon's natural heritage. The Park's revenue-driven structure thus satisfies both the substance and purpose of the commerciality test under Decision 16/2.

SAP derives not only direct monetary benefits but also indirect and reputational advantages from its activities. Its distinction as "the world's first park to host a de-extinct species" has attracted extensive media coverage, global tourism, and additional sponsorship opportunities, thereby

[10] OECD. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. 2023.

increasing donations and the Park's overall brand value. Decision 16/2 explicitly captures such scenarios by requiring benefit-sharing from "all users of DSI benefiting directly or indirectly from its use." These reputational and financial gains reinforce SAP's classification as a commercial actor both in law and in fact.

Ridus's invocation of the CITES framework to characterize SAP's activities as non-commercial is legally misplaced. CITES governs the international trade in endangered species and does not extend to the regulation of genetic or digital resource use, which falls under the purview of the Convention on Biological Diversity (CBD) and Decision 16/2. Furthermore, even within the scope of CITES, the "non-commercial" exception is narrowly construed, applying primarily to scientific acquisitions. It does not encompass public exhibitions that generate significant revenue. Given that SAP's displays are ticketed and produce substantial financial returns, they cannot reasonably be classified under any educational or research exemption and must be regarded as commercial in nature.

Finally, the teleological interpretation of "commercial activity" within the CBD framework further supports this conclusion. The Cali Decision's Preamble explicitly states that "those who benefit from nature, directly or indirectly, must contribute to its conservation and restoration." To exclude nonprofit entities such as SAP from this obligation would frustrate the Decision's fundamental purpose and create unjust disparities between private and public actors benefiting from biodiversity.

CONCLUSION & PRAYER FOR RELIEF

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

I. Ridus violated its international obligations under the Convention on Biological Diversity (CBD) and the Nagoya Protocol by failing to obtain Anecoyon's prior informed consent for the utilization of its genetic resources and Digital Sequence Information (DSI).

III. The de-extinction project carried out by Ridus, Salols Co., and the Sidney Animal Park constitutes a biotechnological use of DSI within the meaning of the CBD and the Nagoya Protocol, thereby triggering binding fair and equitable benefit-sharing obligations under Article 15(7) of the CBD, Article 5 of the Nagoya Protocol, and CBD Decision 16/2 (Cali Decision).

V. Ridus has breached its international obligations by failing to ensure that the benefits arising from the utilization of Anecoyon's genetic resources and DSI, including those generated by entities within its jurisdiction, are shared in a fair and equitable manner, and must therefore compensate Anecoyon consistent with the CBD, the Nagoya Protocol, and Decision 16/2.

VI. Accordingly, Anecoyon is entitled to restitution, including:

(a) the immediate return of the fossil and all associated genetic material;

(b) cessation of all unauthorized de-extinction and DSI-based activities; and

(c) fair and equitable benefit-sharing, including contributions to the Cali Fund, arising from the use of its genetic resources and DSI.

Respectfully submitted,

AGENTS FOR THE APPLICANTS

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