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Emojis and the Law

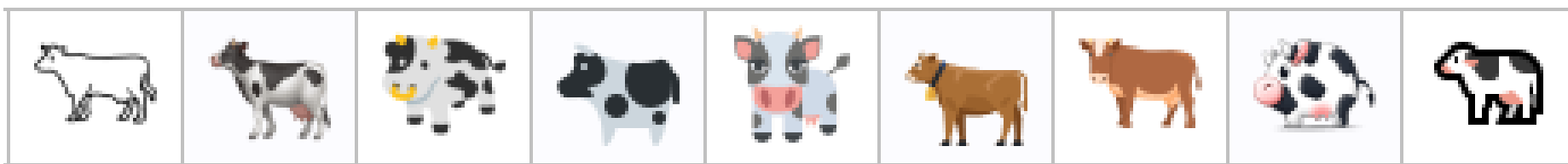
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Definitions

- Emoticons = emotion + icon
 - Kaomoji: `¯_(\ツ)_/¯`
- Emoji = “picture word”
 - Unicode emojis = standard outlines but diverse implementations






- Proprietary emojis (a/k/a “stickers”) = work only within a platform

Overview

- Despite Unicode, emojis are depicted many ways
- Depiction diversity hurts users by causing misunderstandings
- IP protection for emojis spurs depiction diversity
- IP protection for emojis is counterproductive and unprecedented

Interpretation Challenges (1)

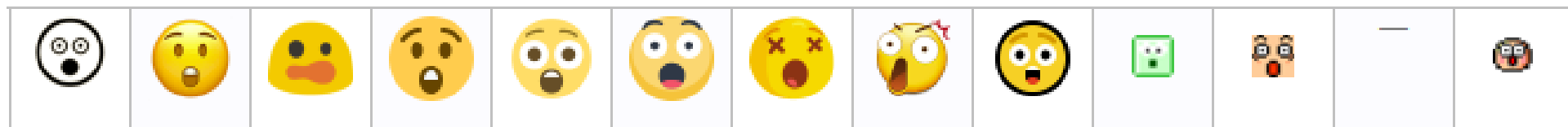
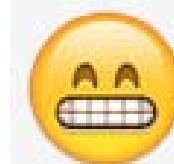


- Visually small and similar + platforms constantly change them 
- Designed to have multiple meanings 
- Unsettled grammar
- Perform a variety of communicative functions
- Dialects (language, cultural, regional, platform-specific) 

Good morning 😊 Interested in the house 🎆 🐱 🐱 🙌 🌊 🐿 🍷 Just need to discuss the details... When's a good time for you?

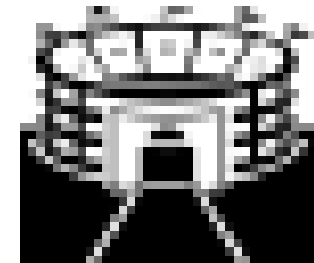
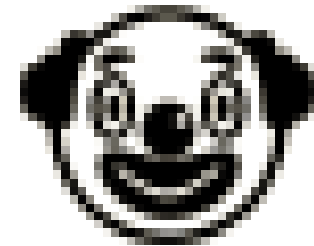
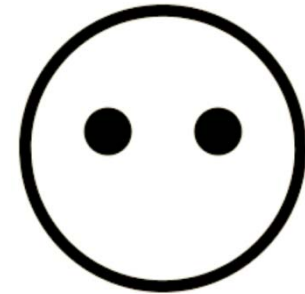
Interpretation Challenges (2)

- Technology mediation changes the depiction without disclosure
 - Intra-Platform Version Incompatibilities
 - Cross-Platform Depiction Diversity/Failed ZWJ
 - Cross-Platform Omissions



IP Protection

- IP in Individual Emojis
- IP in Emoji Sets
- Both copyright and trademark apply to “substantially similar” implementations => force unnecessary/confusing variations to avoid liability
- IP shouldn’t interfere with communications at this level



Some Implications

- Courts need to gather and present correct evidence
- Courts, Copyright Office and PTO should interpret emoji IP narrowly
- Platforms should cross-license emoji sets
 - Or at least disclose substitutions
- Unicode should push for implementation standardization