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 🎈🎉✌️ gió 🐕 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