

Emoji Law

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THE WORLD'S
Top 10 Most Used
EMOJIS ON FACEBOOK



COUNTRIES THAT
Use Emojis Most
AND THE EMOJIS THAT ARE
ESPECIALLY POPULAR IN EACH



Emoji =
“picture word”

 smile

:-) :) :] =)

 frown

:-(:(:[=(

 tongue


:-P :P :-p :p =P

 grin

:-D :D =D

 gasp

:-O :O :-o :o

 wink

;-) ;)

 unsure

:/ :-/ \ :-\

 cry

:(

 devil

3:) 3:-)

 angel

O:) O:-)

 kiss

:-* :*

 heart

<3




Emoticons
=
emotion + icon

Kaomojis

~_(\ツ)_/~

(◦ · _ · ◦)∧(◦ · _ · ◦)
L(∧o∧)X(∧o∧)J
(✿^_^)
(◦●_●◦)
~\~(ツ)~
(づ◦●_●◦)づ
~(˘˘˘)
^(\o∧)/\(^_∧)
(´_`)
◦^_∧◦
(ㄟ_ㄟ)

(^⊙^)
(=^ 工 ^=)
ㄿ●⊙●?
(· ⊖ ·)
= ^ ● ∧ ● ^ =

	Happy	Neutral	Sad
Western	: -)	: -	: - (
Japanese	(^ _ ^)	(0 _ 0)	(T _ T)
Smiley			

Emoticons v. Kaomoji v. Emoji

Emoticon Interpretation Case Studies

Question 1:

Does the emoticon aid or change your interpretation of the text?

Question 2:

What, if any, additional evidence would you like to aid the interpretation?

Case Study #1

Defense attorney emails prosecutor and offers to “stipulate that my client is guilty. :)”

Client later claims a violation of the Sixth Amendment

Court’s Analysis: “No one took [counsel’s] frivolous e-mail as an actual stipulation.”

United States v. Christensen, No. CR 06-085-BLG-RFC, 2013 U.S. Dist. LEXIS 52464, at *5 (D. Mont. Apr. 11, 2013)

Case Study #2: Is this defamatory?

“They are only getting more garbage trucks because Gus needs more tires to sell to get more money for his pockets :P”

[Gus = city official in charge of public works]

Court's Analysis:

“This statement on its face cannot be taken seriously as asserting a fact. The use of the “:P” emoticon makes it patently clear that the commenter was making a joke. As noted earlier, a “:P” emoticon is used to represent a face with its tongue sticking out to denote a joke or sarcasm. Thus, a reasonable reader could not view the statement as defamatory.”

Ghanam v. Does, 845 N.W.2d. 128, 145 (Mich. Ct. App. 2014)

Case Study #3: Does this email thread indicate that Scerbo and Maunch are happy about terminating Elaina?

Scerbo: :-)) did Ray chat with you about Elaina?
[Plaintiff claims this refers to Plaintiff's termination]

Mauch: Yes he did. Thank you for your help. That deserves a big :-))!!!



















































































Court's Analysis

“The Court believes that a reasonable jury could find that the “emoticons,” attached to the emails of two Munich Re managers late in the day on which Plaintiff was terminated, are evidence that the decisionmakers at Munich Re were happy to be able to terminate Plaintiff”

Apatoff v. Munich Re Am. Servs., No. 11-7570 (RBK/KMW), 2014 U.S. Dist. LEXIS 106665, at *9 (D.N.J. Aug. 1, 2014)

The Wonderful World of Emojis

Unicode Emojis

No	Code	Browser	Appl	Goog	FB	Wind	Twtr	Joy	Sams	GMail	SB	DCM	KDDI	CLDR Short Name
1	U+1F600										—	—	—	grinning face
2	U+1F603													grinning face with big eyes
3	U+1F604											—	—	grinning face with smiling eyes
4	U+1F601													beaming face with smiling eyes
5	U+1F606										—		—	grinning squinting face
6	U+1F605										—		—	grinning face with sweat
7	U+1F923									—	—	—	—	rolling on the floor laughing
8	U+1F602											—		face with tears of joy



Apple Animoji

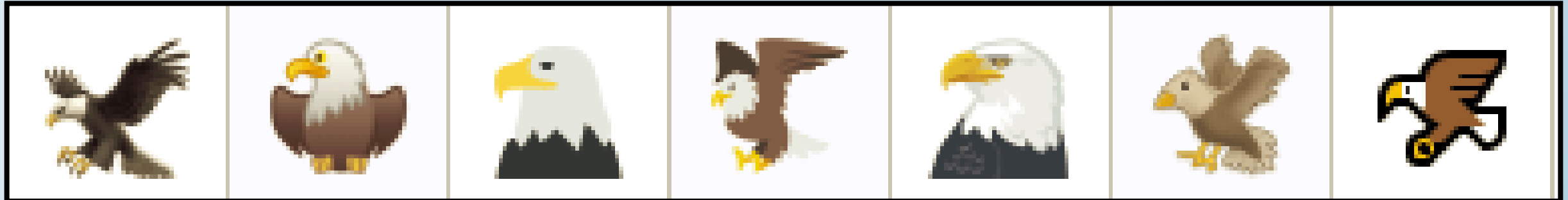
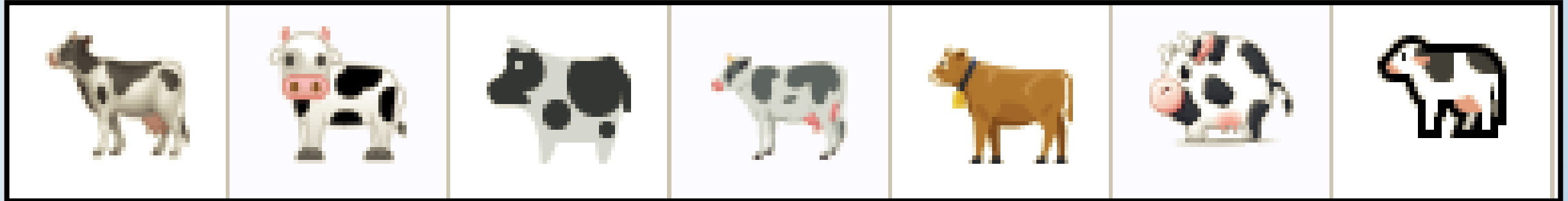


Apple Memoji



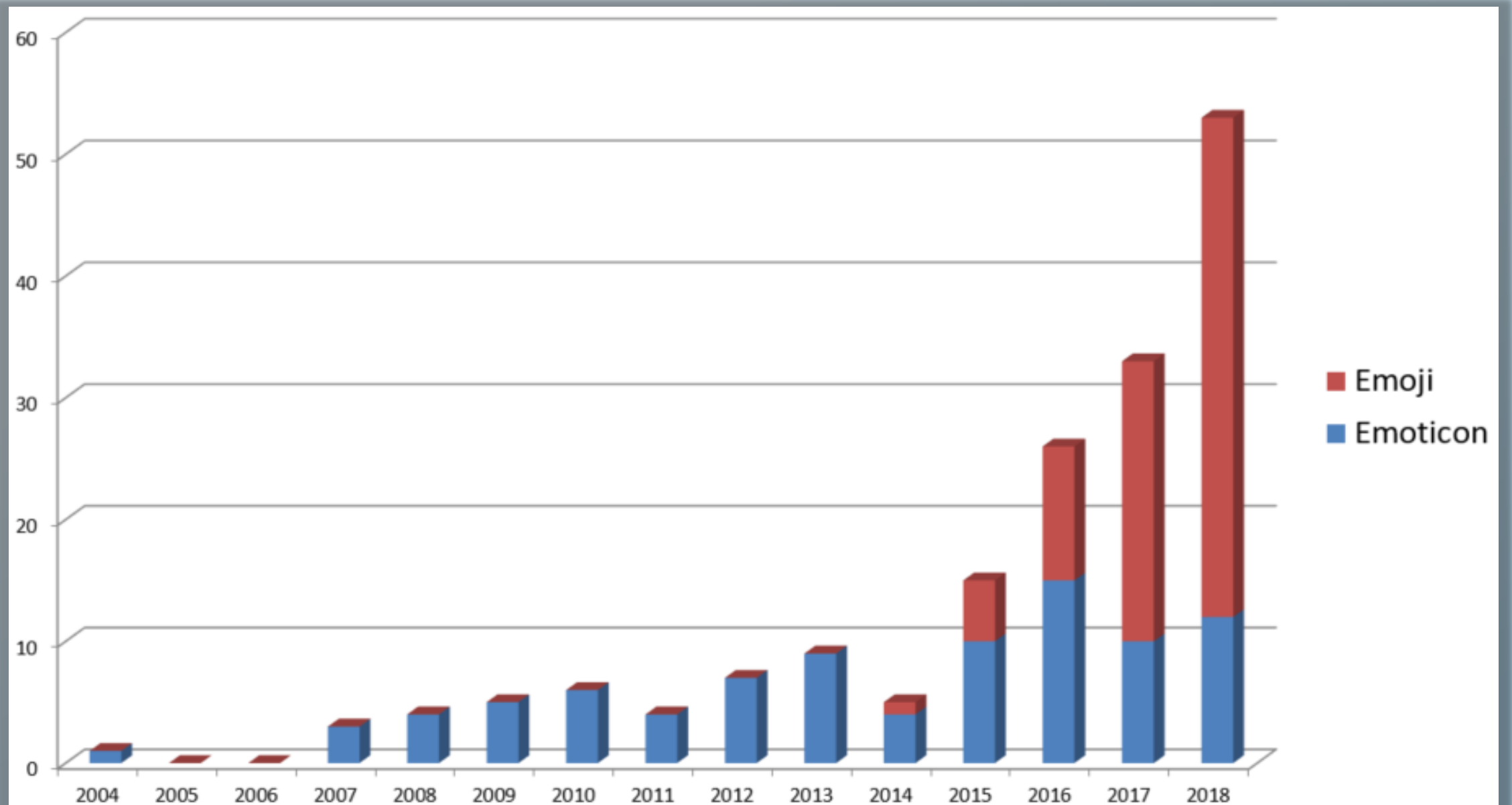
Samsung AR Emoji

Unicode Emoji Depiction Diversity

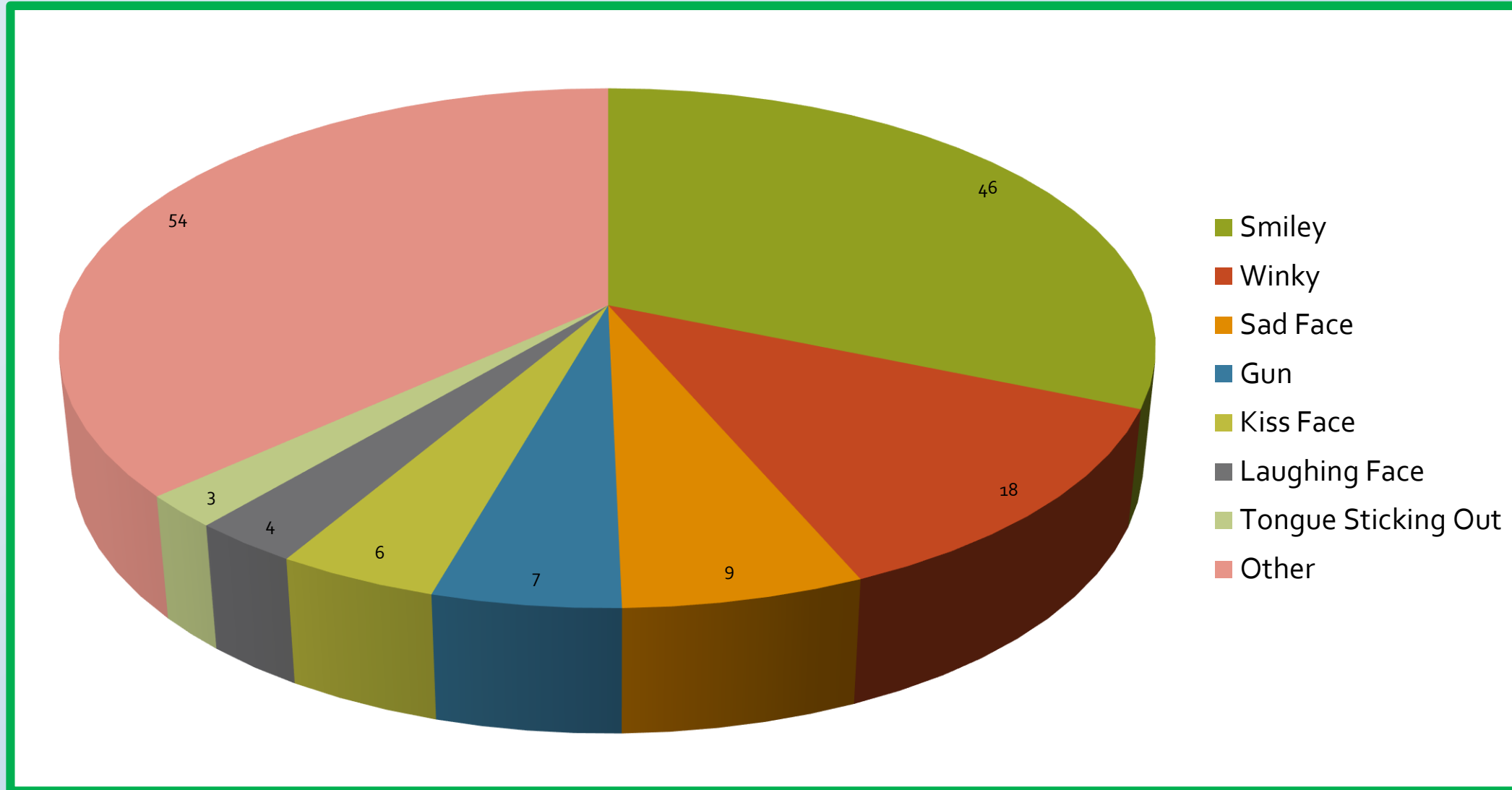


Emojis in Court

Appearance in Court Opinions



Litigated Emojis



n = 147
2 times: Angry Face, Blushing Face, Bomb, Crossing Fingers, Devil, Fists, Hearts, Skull, 100

1 time: Angel Next to Devil, Batting Eyelashes, Broken Hearts, Butt Cheeks, Cat, Clapping Hands, Confused, Cowboy, Crying Face, Dollar Sign with Wings, Dollar Signs, Drugs, Explosion, Face with Xs for Eyes, Fire, Forks/Knives, French Kiss, Frown, Gun Pointed at Head, Hitler, I Love You, Knives, Laughing/Crying, Lips, Mixed Smile, Needles, Nervous, Red Faced Smiley, Scissors, Smiley With Halo, Smirking Face, Smug, Surgical Mask Face, Train Wreck, Two Eyes, Zipper Mouth

Interpreting Emojis

Hypothesis: Everything you normally do to interpret communications works for emojis too

Emojis Can Be Tricky to Decode...

Smiling Face
With Open
Mouth and
Smiling Eyes



Smiling Face
With Open
Mouth and
Cold Sweat












It's all about perspective...



The “person with folded hands” emoji means.....?



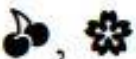
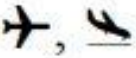

- High Five
- Namaste
- Please
- Prayer
- Thank You



Drugs / getting a tattoo 	Weed / marijuana / general drugs 
Heroin 	Beer 
Cocaine 	Drugs 
<u>MDMA</u>  	Getting high / vaping 

Drug Slang

Table 6. Summary Emoji Ontology

Emoji	Emoji Name	Emoji Meaning
	Rose, rosette	used as subtle indicators of price:
	Growing Heart	used by pedophiles to indicate young girls
	Cherry, Cherry Blossom	used as a reference to a women's virginity, and a minor
	Airplane, Airplane Arrival	Both indicate movement of the poster with the airplane arrival tending to show movement of a minor
	Crown	Indicated that the poster is usually a minor with a pimp controlling them

Sex Trafficking Slang

Platform-Specific Slang



Emojis' Diverse Communicative Roles

Communication Function	Non-Emoji Example	Emoji Example
Substitution	A head nod, a thumbs-up or an “OK” hand sign instead of a spoken “yes”	A smiley instead of the word “yes”
Reinforcement	A thumbs-up with a spoken “yes”	A heart emoji following a declaration of love
Mixed Message	Saying “that will be fun” in a monotone	An eye roll emoji signaling lack of sincerity
Complement	Indicating through finger motions how much liquid someone should pour into a glass	A smiley following the words “tough day” to provide emotional qualification of the text
Emphasis	Gesticulation or variation of vocal pitch	Repeating emojis, such as multiple hearts after a declaration of love ⁷³

Communication Function	Non-Emoji Example	Emoji Example
Discourse management	Periodic head nods to signal that a listener is following the speaker	<p>Emojis establish “social contact” and keep “the lines of communication open and pleasant”⁷⁴</p> <p>Ex. 1: Conversation “metacomment”: a smiley can act as an “utterance opener” to add a cheerful tone to the message, or can be an “utterance ender” to ameliorate an abrupt ending to an online message⁷⁵</p> <p>Ex. 2: Punctuation:⁷⁶ a smiley between words can “break up” sentences, like a speaker might take a breath between sentences</p>

Cross-Platform Incompatibility

These are all the same emoji.

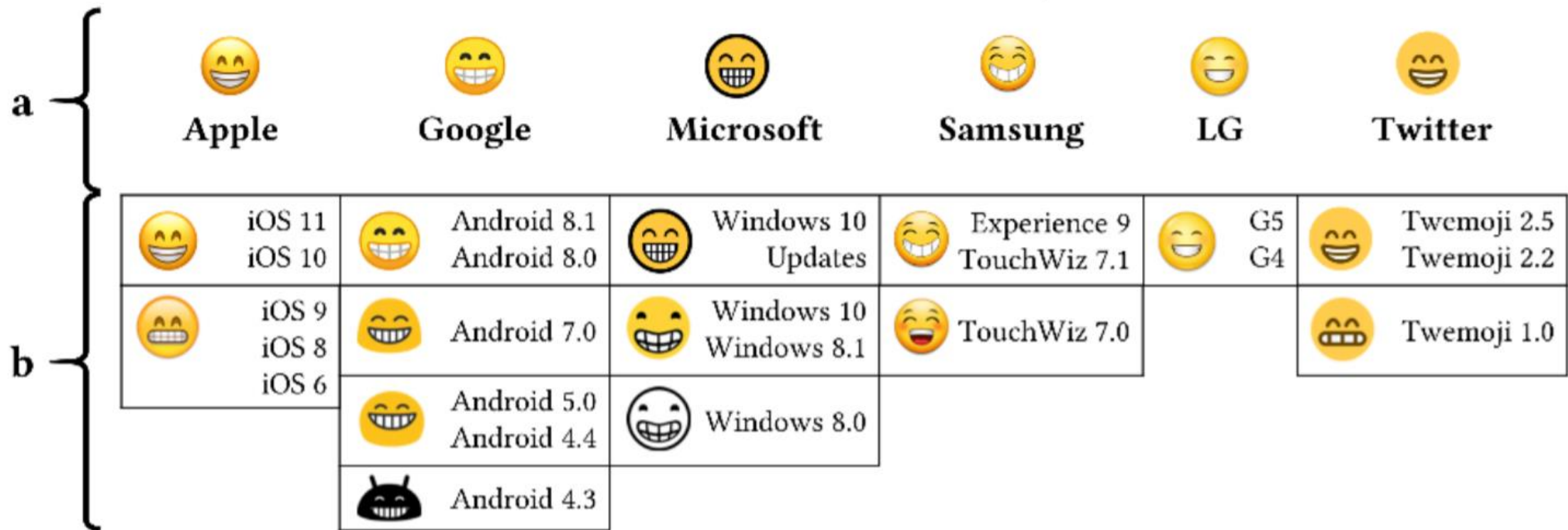
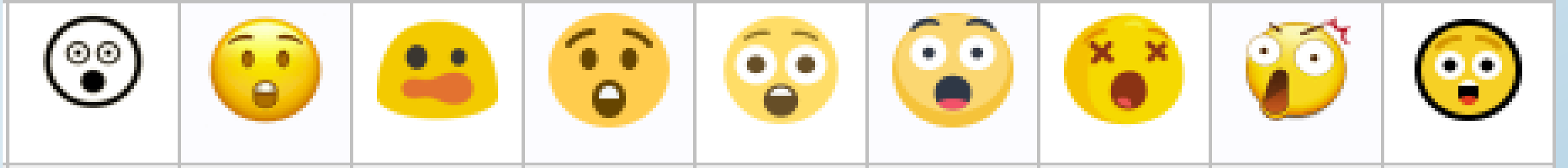


Fig. 1. (a) Vendor-specific renderings of the same “Beaming Face with Smiling Eyes” emoji (U+1F601) (b) Vendor-version specific renderings of the same emoji, in reverse chronological vertical order.

Survey Findings:

- 25%+ didn't know the emoji they posted could appear differently to their followers
- After seeing how the tweets rendered across platforms, 20% would have edited or not sent
- "These statistics reflect millions of potentially regretful tweets shared per day because people cannot see emoji rendering differences across platforms"



Emoji Interpretation Case Studies

Question 1:

Do the emojis aid or change your interpretation of the text?

Question 2:

What, if any, additional evidence would you like to aid the interpretation?

Case Study #4: Defendant posted on a testifying witness' Facebook page:

#RteNow yah lookn 👁️👁️ at the bitch 🖐️🖐️🖐️ dat tld on the homie
Baby Ticc 🍊🍊🍊 🐾🐾🐾🐾 #TW 🌟🌟🌟🌟 🗣️🗣️🗣️ share
my post

Baby Ticc = accused gang member Washington going to trial

TW = witness' Facebook username

*** COURT OPINION DIDN'T ACTUALLY DISPLAY THE EMOJIS***

Is this witness intimidation?

Decision:

“The jury could have reasonably concluded from the photograph and comments that Smith intended to communicate that [the witness] was a despised female who had told on Washington, and she was therefore a “rat” or snitch whom members of the gang should kill to assure she did not testify against Washington at his trial.”

Court's Reasoning:

- Reference to the “bitch” who had told on Washington
- Rat emojis
- Hand with thumb/fingers emojis represents the letter “b,” a symbol of the Bacc Street Crips
- Gunshot emojis, gun emojis, and “share my post”

Case Study #5

Instagram evidence in prosecution of Drissy_Bo for pimping

- Drissy_Bo: Where are you at?
- Megan C.: In the valley
- Drissy_Bo: Trying to come get you ma
- Drissy_Bo: Where yo nigga at?
- Megan C.: I don't have a nigga . . . then come to the valley, then
- Drissy_Bo: How old is you? Is you ready to be down?
- Megan C.: down for what?
- Drissy_Bo: down for yo crown [crown emoji]
- Drissy_Bo: Teamwork make the dream work [emojis of high heels and bags of money]
- Megan C.: Ain't that the truth

Case #5: Expert testimony:

- The crown means the “pimp is the king,” asking “[a]re you ready to be down and support me as your king?”
- “teamwork” was “almost like a bumper sticker for human trafficking,” so common that it had “Internet memes”
- high heels represented prostitutes wearing fancy shoes, and money meant “wear your high heels to come make some money”

Case Study #6: Did a prospective tenant make a promise to the landlord?



Rough Translation: "Good morning" [smiley] "Interested in the house" [emoji string] "Just need to discuss the details....when is a good time for you?"

Court's analysis:

- Per Israeli law, the prospective tenant negotiated in bad faith because the emojis signaled optimism and positive intent
- Landlord awarded \$2,200

Final thoughts

- Emojis look different over time and on different platforms → always ask what both the sender and recipient actually saw. “Emoji depictions come in pairs”
- Emojis deserve equal treatment in the conversation
- Emojis perform many different functions, even in the same sentence
- Display the emojis in your opinions!

Additional Reading

- Emojis and the Law: <http://bitly.com/emojiandlaw>
 - First Draft: Surveying the Law of Emojis: <https://ssrn.com/abstract=2961060>
- Emojis and Intellectual Property Law (with Gabriella Ziccarelli): <https://ssrn.com/abstract=3275803>
- Blog Category: <https://blog.ericgoldman.org/archives/category/emojis>
- Blog Roundup: <https://blog.ericgoldman.org/archives/2018/11/everything-you-wanted-to-know-about-emojis-and-the-law.htm>