



NECESSITY OF LEGAL REGULATION OF "EMOJI" IN VIRTUAL SPACE

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Received: 14 th August 2024		<p>This article explores the necessity of regulating "emojis" within the virtual space from a legal perspective. Emojis have become an integral part of digital communication, widely used across social media platforms and messaging apps to enrich and express textual messages. However, the widespread use of emojis has raised several legal concerns, including issues related to copyright, intellectual property, personal rights, and the potential for harmful or offensive content.</p> <p>The article delves into the legal challenges surrounding emojis, focusing on copyright, brand rights, personal rights, and the potential for emojis to be used in defamatory or harmful ways. It discusses whether emojis should be treated as creative works protected by intellectual property laws and examines their legal standing in digital communication.</p> <p>Furthermore, the paper emphasizes the importance of regulating emojis in the virtual space to maintain a balance between users' freedom of expression and the protection of creators' rights. It argues that the legal recognition of emojis as intellectual property and their regulation is necessary to address emerging legal issues in the digital realm. The article highlights the need for legal frameworks to adapt to the evolving nature of digital communication, ensuring that emojis are adequately protected while fostering innovation and creativity.</p>
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НЕОБХОДИМОСТЬ ПРАВОВОГО РЕГУЛИРОВАНИЯ «ЭМОДЗИ» В ВИРТУАЛЬНОМ ПРОСТРАНСТВЕ

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Аннотация: В данной статье исследуется необходимость регулирования «смайликов» в виртуальном пространстве с юридической точки зрения. Эмодзи стали неотъемлемой частью цифрового общения и широко используются на платформах социальных сетей и в приложениях для обмена сообщениями для обогащения и выражения текстовых сообщений. Однако широкое использование смайлов вызвало ряд юридических проблем, в том числе вопросы, связанные с авторским правом, интеллектуальной собственностью, личными правами и возможностью вредного или оскорбительного контента.

В статье рассматриваются юридические проблемы, связанные с смайликами, уделяя особое внимание авторскому праву, правам на бренд, личным правам, а также возможности использования смайлов дискредитирующими или вредными способами. В нем обсуждается, следует ли рассматривать смайлы как творческие произведения, защищенные законами об интеллектуальной собственности, и исследуется их правовой статус в цифровой коммуникации.



Кроме того, в документе подчеркивается важность регулирования смайлов в виртуальном пространстве для поддержания баланса между свободой выражения мнений пользователей и защитой прав создателей. В нем утверждается, что юридическое признание смайлов в качестве интеллектуальной собственности и их регулирование необходимо для решения возникающих правовых проблем в цифровой сфере. В статье подчеркивается необходимость адаптации правовых рамок к развивающемуся характеру цифровых коммуникаций, обеспечивающих адекватную защиту смайлов и одновременно способствующих инновациям и творчеству.

Ключевые слова: Авторское право, эмодзи, искусственный интеллект, цифровая среда контент, сгенерированный искусственным интеллектом, авторство, право собственности, интеллектуальная собственность, добросовестное использование, товарный знак, права пользователя, клевета

In the digital age, emojis have become an essential part of online communication. These small pictorial representations are widely used to enhance text-based conversations, express emotions, and even convey complex messages in a succinct form. From social media platforms to messaging apps, emojis are now a ubiquitous part of virtual communication. However, their widespread use raises several important legal questions, particularly regarding copyright, intellectual property, defamation, and personal rights. The need for a legal framework to regulate emojis in the virtual space is becoming increasingly clear, as issues surrounding their creation, distribution, and usage continue to evolve.

Emojis, although small and simple, are creative works that can be protected under intellectual property laws. Like other digital art forms, emojis are often created by designers and developers who hold the copyright to their work. The creation of emoji sets by various companies, such as Apple, Google, and Microsoft, involves the application of creative design, making the emojis subject to copyright protection. This raises the question of who owns the rights to these emojis and how they can be used by others¹.

In many cases, emojis are used freely in digital communications, but the intellectual property laws governing their use remain unclear. Some emojis, especially those developed by private companies, may have strict licensing terms. For example, a company may prohibit the unauthorized use of its custom-designed emojis or enforce limitations on their use for commercial purposes². On the other hand, generic emojis, such as those included in Unicode, are typically not copyrighted, but the font and graphical representations of these emojis might still be protected.

Therefore, regulating emojis from a legal standpoint is necessary to establish clear rules regarding their ownership, usage rights, and limitations.

This could help prevent the unauthorized use and distribution of emojis, ensuring that creators and companies receive proper recognition and compensation for their work.

Emojis, though often seen as simple and informal elements of communication, are rapidly becoming significant from a legal perspective, particularly in terms of intellectual property (IP) and copyright. Their growing use across digital platforms and communication channels has raised important questions about who owns the rights to emojis, how they are used, and how they fit within the broader legal framework governing creative works³. Below is an overview of the key aspects of the legal status of emojis with regard to intellectual property and copyright concerns.

At the heart of the legal discussion surrounding emojis is the issue of whether they can be considered "creative works" that are eligible for intellectual property protection. Emojis, though simple in form, are often the result of careful design work and can be seen as a creative expression of ideas, emotions, or concepts. In this sense, they could be considered works of art and therefore eligible for copyright protection.

However, the legal status of emojis is complicated by the fact that many emojis are not necessarily original creations but rather a standard set of symbols that have become widely accepted and used in digital communication. Emojis are often standardized and regulated by organizations such as the Unicode Consortium, which creates a universal character encoding standard that allows emojis to be consistent across various platforms and devices.

The Unicode Consortium is a key player in the emoji landscape. It is a non-profit organization that is responsible for standardizing the use of characters (including emojis) across different software platforms and devices. Unicode provides a universal standard for

¹"To Emoji Or Not to Emoji, That Is The Question" An exploration of the legal consequences of using images in communication.

²"Beware The Emoji" Discusses the legal implications of emojis in commercial activities.

³"Emoji Source of Intellectual Property Dispute" Highlights a trademark dispute involving a Japanese company's emoji app.



emojis, ensuring that they are compatible across systems such as iOS, Android, and other operating systems.

Unicode itself does not own the rights to the individual designs of emojis, but rather to the character set and encoding that enables their universal use. The designs of emojis, however, are often created by individual companies and designers. For example, Apple, Google, and Microsoft have all created their own graphical representations of Unicode's emoji characters. These individual designs are protected under copyright laws and are considered the intellectual property of the companies that create them⁴.

The visual designs of emojis—such as the specific colors, shapes, and overall appearance of the images—can be protected under copyright law. For example, when Apple or Google creates a unique emoji design for their respective platforms, those companies hold copyright over those particular graphical representations. This means that others cannot reproduce or distribute those specific emoji designs without permission⁵.

The issue of copyright protection is particularly relevant for emojis that are used in branding, advertising, or marketing campaigns. When emojis are used in such contexts, the companies that have created or licensed the designs of the emojis may seek to protect their intellectual property rights through copyright law.

In addition to copyright protection, emojis can also be subject to trademark protection. Trademarks protect logos, symbols, and other identifiers that distinguish the goods and services of one company from another. Some companies may choose to register emojis as trademarks if they are used to identify a product or service. For example, the use of a specific emoji as part of a company's marketing efforts could potentially be registered as a trademark, provided it meets the criteria of distinctiveness⁶.

The use of emojis in branding and marketing has become increasingly common. In some cases, companies may attempt to register emojis as part of their branding strategy, ensuring that they are legally protected and cannot be used by competitors⁷. However, it's important to note that trademark law does not protect the general use of emojis themselves, but

rather the specific design or usage in a particular context (e.g., a company's logo or advertising).

The licensing of emoji designs plays a crucial role in determining their legal status. Since many emoji designs are created by private companies (such as Apple, Google, and others), these companies can license their emoji designs for use in other products and services. For example, an app developer may need to obtain a license to use a specific set of emojis in their app. Additionally, companies may license the rights to use their emojis in a variety of ways, such as in merchandise or advertising campaigns.

In contrast, emojis that are part of the Unicode standard are not typically subject to licensing fees, as they are intended to be universally accessible. However, as with any intellectual property, the graphical representation of those Unicode characters is still subject to copyright and licensing restrictions depending on the platform or company producing the design.

One of the main challenges in regulating emojis is the sheer number of different emoji designs and the complexity of their usage. Since emojis are commonly used in informal communication, often as part of user-generated content, it is difficult to monitor and enforce copyright infringement. For example, a user may create and share an altered version of a copyrighted emoji design without permission, making it harder for companies to protect their intellectual property.

Moreover, since Unicode emojis are standardized and can be reproduced across different platforms, determining ownership rights can be tricky. The original creators of the design may have copyright claims, but the widespread use and modification of emojis complicate enforcement⁸. Additionally, many emojis are considered to be in the public domain, or they may be deemed too simple to be eligible for protection under copyright law, further complicating the issue.

As the use of emojis continues to grow, legal protections may evolve to better address the challenges of copyright, trademark, and intellectual property in the digital age. There is a need for more clarity in the legal landscape regarding the ownership and protection of emoji designs, especially as emojis become increasingly incorporated into commercial and branding contexts⁹.

⁴"Legal Implications of Emojis" Examines how emojis are interpreted in legal contexts.

⁵ "Emojis as Intellectual Property Right: Registering Speech Formats"

⁶"The Legal Significance of Emojis in the Digital Age" Explores how emojis contribute to misunderstandings requiring judicial interpretation.

⁷"Emojis in Public Agency Communication" Discusses the potential pitfalls of using emojis in public communications.

⁸"Emoji Laws in Health Care"Examines the role of emojis in healthcare communications and their legal implications.

⁹"Copyright Protection for Emojis" Discusses how emojis can be protected under copyright law.



Some suggestions for improving the legal framework surrounding emojis include:

- **Clearer guidelines for the copyright of emoji designs**, particularly for companies that create their own designs of Unicode emojis.
- **Stronger enforcement mechanisms** to prevent unauthorized use of copyrighted emoji designs, especially in commercial contexts.
- **International collaboration** to harmonize laws governing emoji protection across borders, given their global use and appeal.

The legal status of emojis in terms of intellectual property and copyright concerns is complex and evolving. While emojis themselves may not be directly copyrighted by Unicode, the individual designs of emojis are protected by copyright law and subject to trademark regulations. As emojis continue to be widely used for communication and marketing, clear legal frameworks will be necessary to ensure that creators and companies are properly recognized and compensated for their work. It is important to establish guidelines that balance the protection of intellectual property with the free and creative use of emojis in digital communication.

Emojis have also been associated with trademarks, especially when they are used as part of marketing campaigns or to represent a brand. Companies may use emojis in their logos or advertisements, which can create brand recognition. However, the use of emojis in this context raises questions about brand protection and the potential for trademark infringement.

For example, if a company incorporates an emoji into its branding and another company uses a similar emoji for competing purposes, it could lead to confusion in the marketplace. In such cases, the company whose emoji is trademarked might seek legal recourse for trademark infringement. This situation is particularly complex in the virtual space, where emojis are often shared and reused in various ways. Legal regulation could help establish rules about the appropriate use of emojis in commercial contexts, providing clarity and reducing the potential for legal disputes over trademark violations¹⁰.

As emojis have become an integral part of digital communication, they are also increasingly being used in branding, marketing, and advertising campaigns. This has introduced a number of trademark

issues, particularly as companies seek to protect their brands and intellectual property in a virtual and increasingly visual marketplace. Below is a comprehensive explanation of trademark issues and brand protection as they relate to emojis. Trademark law is designed to protect logos, symbols, words, or other distinctive identifiers that distinguish one company's goods or services from another. Given their significant role in digital communication, emojis are now being employed by brands to strengthen their identity and engage with consumers. As a result, emojis can be used as part of a company's branding strategy, and this use raises various legal questions about their protection under trademark law.

Emojis can be treated as part of a company's branding elements if they are used consistently and uniquely to represent a product or service. If a specific emoji or combination of emojis becomes associated with a particular brand, that emoji could be eligible for trademark protection. This means that a company could register an emoji (or a series of emojis) as a trademark, giving it the exclusive right to use that emoji in connection with its goods and services. For example, if a company uses a specific emoji to represent its product in advertising, marketing campaigns, or on social media, and that emoji becomes strongly associated with the brand, the company may seek trademark protection for the emoji. This protects the emoji from being used by competitors in a way that could cause confusion among consumers about the source or sponsorship of goods or services¹¹.

Trademark infringement occurs when a party uses a trademark or a similar mark that is likely to confuse consumers about the source of a product or service. In the context of emojis, this issue can arise if a competitor uses a trademarked emoji in a way that creates confusion about its affiliation with the original brand.

For instance, if a company has trademarked an emoji and a competitor uses a similar emoji in its own advertising or product packaging, consumers may mistakenly believe the two companies are related, which could undermine the value of the original brand. This is especially problematic in the digital age, where emojis are widely shared and reused, and it may be difficult to monitor unauthorized usage¹².

Companies that rely on emojis as part of their branding strategy need to be vigilant in protecting their

¹⁰ "Cases Involving Emojis Are Still on the Rise: eDiscovery Trends"

¹¹ "Apple Accused of Diverse Emoji Copyright Infringement" Details a case where Apple was accused of infringing on emoji copyrights.

¹² "Emojis: Unravelling the Legal Implications of Digital Expressions"



trademarks from infringement. In cases of suspected infringement, a company can take legal action to prevent further unauthorized use and seek damages.

Brands are increasingly using emojis in their marketing campaigns to appeal to younger audiences and engage in more informal, relatable communication. Emojis can be part of a logo, an advertisement, or even used in social media content, often making a brand seem more approachable and modern. For example, a restaurant might use a pizza emoji in its advertising materials to symbolize its core offering, or a fitness brand might use a running emoji to promote an active lifestyle.

When emojis are used in these ways, they can become associated with the brand, making them an essential part of the company's identity. This association can be protected through trademark law, giving the company exclusive rights to use the emoji in certain contexts. Without trademark protection, competitors may use the same or similar emojis in their own marketing, diluting the distinctiveness and value of the brand's use of emojis¹³.

Unicode is a standard that ensures the compatibility of emojis across different platforms and devices. Emojis created by Unicode are not automatically subject to trademark protection, as Unicode merely provides the universal code for emojis, not the specific graphical design. However, individual companies or developers that create their own graphical representations of these Unicode emojis can apply for trademark protection.

For instance, Apple, Google, and other tech companies each have their own design for the same Unicode emoji (e.g., the smiling face emoji). These designs can be protected under trademark law if they are used consistently in a branded context. The issue arises when the original emoji designs are modified or used in ways that might confuse consumers¹⁴. For example, if a particular design or version of an emoji is closely tied to a company's brand, that specific design may be trademarked, and its unauthorized use by others could lead to claims of infringement¹⁵.

The rise of social media has amplified the role of emojis in branding and communication. Companies are now using emojis in Twitter hashtags, Instagram posts, Facebook ads, and more. Emojis can become an

important element of a brand's online presence, helping it stand out in a crowded marketplace.

However, the informal nature of social media communication also increases the risk of emoji misuse. Brands may find that their trademarked emojis are used in ways that they do not approve of, potentially diluting the strength of their brand or even damaging their reputation. For example, an emoji used in a company's advertising campaign could be co-opted by individuals or groups in a negative or inappropriate context, such as in association with harmful content or controversial social movements.

To combat this, brands need to monitor the use of their trademarked emojis online. This can involve tracking social media platforms and user-generated content for unauthorized usage and taking legal action when necessary. In some cases, social media platforms may be able to remove offending content, but legal recourse might still be needed if the brand suffers significant harm.

While trademark protection for emojis is becoming more common, registering an emoji as a trademark may be difficult in some jurisdictions. One of the key requirements for trademark registration is distinctiveness. In order for an emoji to be eligible for trademark protection, it must be distinctive enough to identify the source of goods or services. Generic emojis or emojis that are widely used across multiple platforms may face difficulties in meeting this requirement, as they are unlikely to be considered unique identifiers for a particular brand¹⁶.

Additionally, emojis that are based on Unicode characters may face challenges in terms of ownership, as the Unicode Consortium does not allow for exclusive claims to the characters it standardizes. As such, companies seeking to protect their use of emojis in branding may have to be creative in demonstrating how their particular emoji design is distinct and serves as an identifier of their brand¹⁷.

While emojis are generally intended to convey positive or neutral messages, they can also be used to express negative emotions or intentions. In some cases, emojis may be employed to harass, insult, or defame others. Given that emojis are often used in social media posts or messages, their potential to cause harm is significant, and legal regulation may be needed to

¹³"Researching The Use of Emojis in the Legal Profession" Examines how emojis are utilized within the legal profession.

¹⁴"Emoji: Not a Trademark for EUIPO" Discusses a case where an emoji was not granted trademark status by the EUIPO.

¹⁵"The Legal Significance of Emojis in the Digital Age" Explores how emojis contribute to misunderstandings requiring judicial interpretation.

¹⁶"Emoji in eDiscovery Are Here to Stay" Discusses the permanence of emojis in electronic discovery processes.

¹⁷"What is the Legal Meaning of an Emoji?" Explores the legal interpretation of emojis in various contexts.



address issues of online harassment, defamation, and hate speech.

For instance, if an emoji is used in combination with text to deliver an offensive message, it could potentially violate the victim's personal rights or damage their reputation. In such cases, emojis could be considered part of the defamation or harassment, requiring legal oversight to prevent misuse. A clear legal framework would help establish guidelines for the appropriate use of emojis and set boundaries for their role in communication.

One of the key challenges in regulating emojis is balancing user rights with the need for legal control. Emojis are often used to express emotions, ideas, and cultural references, and they play a significant role in fostering personal expression. However, without proper regulation, the potential for misuse exists. Establishing clear legal boundaries for the use of emojis would ensure that users are protected from harmful content while still preserving their freedom of expression.

Legal regulation could ensure that users have the right to express themselves through emojis without fear of their content being misused, while also providing avenues for recourse in cases of harassment or defamation. Such measures would create a safer and more respectful environment for digital communication, protecting both creators' rights and users' freedoms¹⁸.

The global nature of the internet further complicates the regulation of emojis. While emojis may have universal appeal, the legal framework governing their use varies from country to country. Different jurisdictions have different laws regarding copyright, defamation, and intellectual property, creating potential conflicts when emojis are used across borders¹⁹.

For example, emojis that may be acceptable in one country could be deemed offensive or defamatory in another. This disparity highlights the need for international cooperation and the development of a global legal framework to regulate emojis. International treaties, such as the Berne Convention for the Protection of Literary and Artistic Works, could provide a foundation for establishing common rules for the protection of emojis as intellectual property. Similarly, global efforts to address online harassment and defamation could extend to the use of emojis, ensuring that the digital space remains safe and respectful for users worldwide²⁰.

Emojis have become a central part of modern digital communication, but their legal status remains

ambiguous. As the use of emojis continues to grow, it is crucial to address the legal issues surrounding their use, ownership, and regulation. By establishing clear legal frameworks, we can protect intellectual property rights, prevent misuse, and ensure that emojis continue to enhance communication in a safe and respectful manner.

Regulating emojis in the virtual space is necessary to address the challenges posed by their widespread use, including issues related to copyright, trademark, defamation, and personal rights. As digital communication evolves, so too must the laws that govern it, ensuring that emojis are adequately protected and that users can freely express themselves within a well-regulated environment.

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¹⁹ "Emojis Are Protected by Copyrights" Discusses the copyright protection of emojis in Brazil.

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