

The Letter (and Emoji) of the Law

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Date : April 24, 2020

Eric Goldman, [Emojis and the Law](#), 93 Wash. L. Rev. 1227 (2018).

Eric Goldman's [Emojis and the Law](#) is 📱📱📱📱. If you don't know what that sentence means, then Goldman's article is a perceptive early warning about a problem that will increasingly confront courts. Any time legal consequences turn on the content of a communication, there is a [live evidentiary question](#) about the meaning of the emoji it contains. Has a criminal defendant who uses 📱 in an Instagram post [threatened a witness](#)? Has a prospective tenant who uses 📱 in a text message [agreed to lease an apartment](#)? To answer these questions, lawyers and judges must know what emoji are and how they work, and Goldman's article is the beginning of wisdom.

Even if you *did* know that the [Fire](#) emoji means that *Emojis and the Law* is "hot" in the sense of [Larry Solum](#)'s "Download it while it's hot!" Goldman raises deeper questions. How did you learn this meaning? Is it reliably documented in a way that briefs and opinions can cite? What about the fact that the "same" emoji can look dramatically different on an iPhone and on a PC? In short, the interpretation of emoji is problematic in a way that ought to make legal theorists sit up and pay attention.

Goldman begins with an overview of emoji: how they are implemented on a technical level and how they are used socially. The short version of the technical story is that the Unicode Consortium standardizes the characters used on computers (e.g., [A](#), [a](#), [H](#), and [Q](#)) and the way each character is encoded in bits (e.g., [Latin Capital Letter A](#) is encoded as the bits 01000001 in the widely used UTF-8 encoding). It has now added emoji to the characters it standardizes, giving us such familiar friends as [Hundred Points Symbol](#) and [Face with Tears of Joy](#). (Goldman also discusses "emoji" that are run by private companies and not standardized by the Consortium, such as [Bitmoji](#) and [Memoji](#), which are their own kettle of worms.)

As Goldman astutely emphasizes, however, the "standardization" of emoji is quite limited. The Consortium defines an emoji's name and encoding: "[Fire Engine](#)" is 11110000 10011111 10011010 10010010 in UTF-8. But it does not control how "Fire Engine" will appear on different platforms. Compare Apple's [realistic ant emoji](#) with Microsoft's "unsettling" [bee in disguise](#)." The sender of an emoji may have one image in mind; readers may see something else entirely. Nor does the Consortium control emoji semantics. It was Internet users who turned 📱 and 📱 into [sexual innuendoes](#). Moreover, emoji "have the capacity to transcend existing language barriers and be understood by speakers of diverse languages" (P. 1289): emoji can accompany messages in English, Italian, Russian, Hebrew, and Hindi, or even serve as a common dialect for all of them.

This combination of technical fixity and social fluidity means that emoji pose difficult interpretive problems. This is hardly unique to law—see generally Gretchen McCulloch's entertaining and informative popular book on Internet linguistics, [Because Internet](#)—but in law the problems arise with particular frequency and intensity. As Goldman has [documented](#), judicial encounters with emoji are rapidly increasing. He found 101 cases that referred to "emoji" or "emoticon" in 2019.

Goldman offers useful advice for lawyers and judges. As a starting point, the variation in how emoji are displayed makes it important to *show the actual emoji*. “The rat emoji” is not specific enough; maybe it wasn’t the [Rat](#) emoji but the [Mouse](#) emoji instead. (In a labor case or a witness intimidation case, the difference could matter.) Nor is it enough for a judge to insert an emoji in the PDF version of the court’s opinion. The emoji as displayed on the court’s Windows PC might differ from the emoji as seen on the victim’s Samsung phone or as sent from the defendant’s iPhone. (And that’s to say nothing of the difficulties legal research services create when they [fail to reproduce](#) emoji in opinions.) Legal actors dealing with emoji need to be sensitive to these divergences when they try to establish who said what to whom.

Another practical point, which Goldman has developed in his [blogging on emoji](#), is that courts must be careful to remember that the meaning of an emoji is negotiated among the communities that use them to communicate. Sometimes they carry metaphorical or symbolic meaning; sometimes their meanings are context-specific. In one case, a court relied on expert testimony to establish that 🇵🇸 has a [specific and incriminating meaning](#) in the context of sex trafficking.

As these examples suggest, emoji raise interpretive problems that should also be of great interest to legal theorists. They are like text, but not quite text, and thus they unsettle assumptions about text. For example, we are accustomed to thinking that glyph variations are irrelevant to meaning. Surely, it should not affect the interpretation of the Constitution that we now write “Congress” with a [Latin Small Letter S](#) instead of “CongrefS” with a [Latin Small Letter Long S](#). A contract does not mean one thing in Times New Roman and another in Baskerville. And yet platform-specific glyph variations in emoji can make a real difference in meaning, as when Apple changed its glyph for the [Pistol](#) emoji from a realistic firearm to a bright green squirt gun. Indeed, platforms switched to cartoony water pistols not in spite of but [because of](#) the shift in meaning. [Semantic fixation](#) depends on syntactic fixation. The point is not just that emoji function differently than English text in plain old Latin script (which they do), but that they point out how even a concept as simple as “Latin script” contains multitudes.

More generally, Goldman’s thoughtful discussion of emoji interpretation is a useful example of legal interpretation in a setting of obvious and inescapable ignorance. The very unfamiliarity of emoji means that the interpretive challenges are front and center—and thus they help us see more clearly the challenges that have been with us all along. All of the familiar interpretive sources are available to judges interpreting emoji: personal testimony from the parties, expert testimony about emoji usage, surveys, dictionaries of [varied](#) and [controversial](#) provenance and quality, even corpus linguistics. But in a context where no meanings are plain because all meanings are new, emoji invite us to come at the problem of legal interpretation with true beginner’s mind.

Cite as: James Grimmelman, *The Letter (and Emoji) of the Law*, JOTWELL (April 24, 2020) (reviewing Eric Goldman, *Emojis and the Law*, 93 Wash. L. Rev. 1227 (2018)), <https://cyber.jotwell.com/the-letter-emoji-of-the-law/>.