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Emojis: An Approach to Interpretation

Patricia Vilma Graham

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EMOJIS: AN APPROACH TO INTERPRETATION

BY PATRICIA VILMA GRAHAM*

TABLE OF CONTENTS

I. WHAT ARE EMOJIS?.....	126
A. The History of Emojis.....	127
B. Emojis and Increased Popularity	128
II. INTERPRETATIVE CHALLENGES	129
A. Ambiguous Meanings of Emojis	130
B. Legal Challenges: Interpreting Emojis in Court	131
C. Defining Emojis	132
III. EMOJIS AND EVIDENTIARY CHALLENGES	132
A. Visual Representation	134
B. Context.....	135
1. <i>Societal Context</i>	135
a. Application in Cases.....	136
2. <i>Cultural Context</i>	139
a. Application in Cases.....	140
3. <i>Environmental Context</i>	141
a. Application in Cases.....	141
IV. COURT GUIDELINES	144
A. Visual Representation	145
B. Context.....	146
1. <i>Societal Context</i>	146

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2. <i>Cultural Context</i>	149
3. <i>Environmental Context</i>	150
V. CONCLUSION.....	151

INTRODUCTION

With the widespread use of technology in daily life, individuals have turned to various forms of digital communication to express themselves, such as using capital letters to convey shouting, exclamation points to express excitement, and emojis to depict facial expressions.¹ Emojis, however, are not limited to just facial expressions.² They encompass pictograms of faces, people, objects, places, weather, and even animals, and are commonly used in electronic messages.³ Among other things, emojis can fill in emotional cues and express irony, humor, or body language.⁴ If—as the saying goes—a picture is worth a thousand words, this would explain why individuals choose to express themselves through emojis.⁵

According to Professor Eric Goldman, a legal scholar who has been tracking the prevalence of emojis in court cases, emojis are emerging in virtually every area of law due to the frequency of digital communication.⁶ As of March 2024, there are 3,782 emojis in the Unicode Standard, a character coding system used for computers.⁷ This number increases almost yearly as new software updates introduce new emojis.⁸ Between 2004 and 2019, Goldman tracked an exponential increase in the prevalence of emojis

1. Bai Qiyu, Dan Qi, Mu Zhe & Yang Maokun, *A Systematic Review of Emoji: Current Research and Future Perspectives*, 10 FRONTIERS PSYCH. (2019), 10.3389/fpsyg.2019.02221.

2. *Id.*

3. See generally Vyvyan Evans, *Emojis Actually Make Our Language Better*, N.Y. POST (Aug. 12, 2017, 4:24 PM), <https://nypost.com/2017/08/12/emojis-actually-make-our-language-way-better> (outlining how emoji facial expression improve the expression of tone of voice and body language).

4. Aleksandra Atanasova, *Emojis: Why We Love Them So Much and What They Mean*, SOCIALMEDIATODAY (Nov. 14, 2016), <https://www.socialmediatoday.com/news/emojis-why-we-love-them-so-much-and-what-they-mean/450176>; Evans, *supra* note 3 (describing how emojis aid the expression of emotions in digital communication).

5. See generally Atanasova, *supra* note 4 (discussing emojis as a new expression).

6. Eric Goldman, *What's New with Emoji Law? An Interview*, TECH. & MKTG. L. BLOG (Feb. 11, 2019), <https://blog.ericgoldman.org/archives/2019/02/whats-new-with-emoji-law-an-interview.htm> [hereinafter *What's New with Emoji Law*].

7. See *How Many Emojis are There in Total? (Emoji Count)*, WEBNOTS, <https://www.webnots.com/how-many-emojis-are-there-in-total> (Mar. 1, 2024).

8. *Id.*; see generally *About the Unicode® Standard*, UNICODE.ORG, <https://unicode.org/standard/standard.html> (last visited Feb. 18, 2023) (describing The Unicode Standard).

in court cases.⁹ The year 2018 accounts for 30% of the data that Goldman collected in that time frame.¹⁰ Goldman's most recent data from 2021 indicates that there were 166 cases that referenced either an emoji or an emoticon.¹¹ Goldman comments that, despite an increased presence of emojis in court cases, opinions and legal search engines continue to omit emojis.¹² Altogether, he contends that the courts remain woefully under-prepared to tackle emojis.¹³

Several events are attributable to the increased prevalence of emoji references.¹⁴ First, beginning in the late 1990s, instant messaging became popular, specifically through AOL Instant Messaging ("AIM"), where many people were first introduced to emojis.¹⁵ In 2008, the first iPhone launched and added the first emoji keyboard to smartphones in Japan, increasing the use of emojis in daily communications.¹⁶ Later, in 2011, Apple launched the emoji keyboard for worldwide use.¹⁷ Now, in 2024, emojis are, arguably, deeply engrained in communication habits due to the longstanding presence and influence of social media and smartphones.¹⁸

To complicate things, a user's demographics, such as age, gender, cultural background, and social group, may influence an emoji's meaning.¹⁹ With the use of emojis becoming more common, the ambiguity around what emojis depict and how different users interpret them is bound to become a more significant issue in courts.²⁰ While attorneys struggle to interpret the different meanings behind emojis, courts also struggle to handle the nuances when emojis are offered as evidence.²¹ For example, in homicide cases, emojis can be found in threats communicated by the defendant to the

9. Dami Lee, *Emoji are Showing Up in Court Cases Exponentially, and Courts Aren't Prepared*, THE VERGE (Feb. 18, 2019, 10:13 AM), <https://www.theverge.com/2019/2/18/18225231/emoji-emoticon-court-case-reference>.

10. *What's New with Emoji Law*, *supra* note 6.

11. Eric Goldman, *2021 Emoji Law Year-in-Review*, TECH. & MKTG. L. BLOG (Jan. 9, 2022), <https://blog.ericgoldman.org/archives/2022/01/2021-emoji-law-year-in-review.htm>.

12. *What's New with Emoji Law*, *supra* note 6.

13. *Id.*

14. *See generally* Lee, *supra* note 9 (reporting on the rise in emoji references in American courts).

15. Nicholas Bowman, *AOL Instant Messenger Taught Us How to Communicate in the Modern World*, SMITHSONIAN MAG. (Dec. 11, 2017), <https://www.smithsonianmag.com/innovation/aol-instant-messenger-taught-us-how-to-communicate-in-modern-world-180967484>.

16. Jeremy Burge, *The Original iPhone Emoji Keyboard*, EMOJIPEDIA.ORG (Feb. 2, 2018), <https://blog.emojipedia.org/the-original-iphone-emoji-keyboard>.

17. Daniel Hånberg Alonso, *Emoji Timeline: A Timeline of Cultural and Technical Events in the History of Emoji*, EMOJI TIMELINE, <https://emojitimeline.com> (last visited Jan. 27, 2024).

18. Hamza, *How Have Emojis Transformed the Ways We Communicate?*, BOOTCAMP (Jan. 14, 2022), <https://bootcamp.uxdesign.cc/how-have-emojis-transformed-the-ways-we-communicate-d559336dec54>.

19. Qiyu et al., *supra* note 1.

20. *See id.*

21. Samantha Murphy Kelly, *Emojis are Increasingly Coming Up in Court Cases. Judges are Struggling with How to Interpret Them*, CNN BUS., <https://www.cnn.com/2019/07/08/tech/emoji-law> (July 18, 2019, 10:33 AM).

victim.²² In conjunction with a short message, emojis as simple as the “face with steam in nose” emoji (🤨), the “knife” emoji (🔪), the “closed fist” emoji (👊), and the “alarm clock” emoji (🕒) can communicate a violent message, depending on the surrounding tone and context.²³ More generally, emojis can provide additional nonverbal expression that supplements normal language to cure an otherwise actionable statement or to illuminate the hidden intention of an individual.²⁴ Ultimately, the rise of emojis will continue to challenge judges and lawyers as societal, cultural, and environmental contexts continue to influence how emojis garner several different meanings over times.²⁵

Overall, this Note explores courts’ current approaches to interpreting emojis and reviews the legal challenges associated with emoji interpretation. This Note also proposes court guidelines to assist with these legal challenges.²⁶ Specifically, this Note argues that courts should provide a visual representation of the actual emojis and analyze them within their societal, cultural, and environmental contexts, using a variety of outside sources.²⁷ Part I of this Note details the background of emojis and how they gained popularity.²⁸ Part II describes the interpretative challenges associated with emojis, addressing emoji ambiguity and legal challenges associated with emoji interpretation.²⁹ Part III examines the evidentiary challenges associated with emojis, considering the legal foundation, case law, and other sources used to develop court guidelines for emoji interpretation.³⁰ Lastly, Part IV proposes guidelines to assist courts with the difficult task of emoji interpretation.³¹

I. WHAT ARE EMOJIS?

22. Lee, *supra* note 9.

23. See Sameer Hinduja, *Emoji as Threats in Student Messages and Social Media*, CYBERBULLYING RSCH. CTR. (Apr. 27, 2018), <https://cyberbullying.org/emoji-as-threats-in-student-messages-and-social-media>; Jeremy Burge & John Kelly, *Catalog of Apple iOS Emojis*, EMOJIPEDIA.ORG, <https://emojipedia.org/apple> (last updated Mar. 2024). Throughout this Note, the names of the emojis will be sourced from Emojipedia, and Apple iOS 16.4 emoji renditions will be used, unless otherwise specified.

24. See generally Lee, *supra* note 9 (describing the influx of cases involving emojis).

25. See Kelly, *supra* note 21.

26. See discussion *infra* Parts I–IV.

27. See *infra* Part IV.

28. See *infra* Part I.

29. See *infra* Part II.

30. See *infra* Part III.

31. See *infra* Part IV.

Before emojis, punctuation-based facial expressions, known as emoticons, dominated online communication.³² Emojis evolved from emoticons, sharing the same goal of enhancing expression in text-based communication.³³ The word “emoji” originates from three kanji characters in Japanese.³⁴ Softbank, a Japanese investment holding company, released the world’s first emoji set in 1997, which included ninety emojis and heavily influenced those used by Apple.³⁵

A. THE HISTORY OF EMOJIS

Many credit Shigetaka Kurita as the originator of emojis.³⁶ In 1999, Shigetaka Kurita created a 176 emoji set for ease of communication on the internet system of NTT DoCoMo, a Japanese mobile phone operator.³⁷ NTT DoCoMo challenged him to translate 176 ideas into expressive 12-bit symbols within five weeks, which Kurita successfully met.³⁸ Although Japanese culture inspired the development of Kurita’s 176 emoji set, he relied on Zapf dingbats, manga, and emoticons rather than the kanji.³⁹

While Kurita did not create today’s emojis, his emoji set certainly inspired their creation and later widespread use.⁴⁰ Kurita aimed to maximize the limited amount of email space by creating an expressive, yet abbreviated means of communication.⁴¹ Although the 176 emoji set included almost no faces, they incorporated symbols that would be useful on maps, for weather, sports, and modes of transportation.⁴² This was the beginning of a new form of digital communication, a new visual language.⁴³

32. Claire Nowak, *Why Do We Use Emojis Anyway? A Fascinating History of Emoticons*, READER’S DIG. (Apr. 1, 2022), <https://www.rd.com/article/history-of-emoji>.

33. *Id.*

34. Jacopo Prisco, *Shigetaka Kurita: The Man Who Invented Emoji*, CNN (May 22, 2018), <https://www.cnn.com/style/article/emoji-shigetaka-kurita-standards-manual/index.html>.

35. Daniel Hånberg Alonso, EMOJI TIMELINE, <https://emojitimeline.com> (last visited Apr. 12, 2024).

36. Prisco, *supra* note 34; Alonso, *supra* note 35.

37. Prisco, *supra* note 34.

38. *Id.*

39. *Id.*; Shigetaka Kurita, *Emoji, 1998-1999*, MOMA (2019) (citing Glenn Lowry, *MoMA Highlights: 375 Works from The Museum of Modern Art*, <https://www.moma.org/collection/works/196070> (last visited Jan. 18, 2024)).

40. Prisco, *supra* note 34; Alonso, *supra* note 35; Arielle Pardes, *The WIRED Guide to Emoji*, WIRED (Feb. 1, 2018, 9:23 AM), <https://www.wired.com/story/guide-emoji> (discussing how emojis were developed and quickly gained worldwide popularity).

41. Alonso, *supra* note 35.

42. Kaitlyn Tiffany, *176 Original Emoji Will Become Part of the Museum of Modern Art’s Collection*, THE VERGE (Oct. 26, 2016, 3:21 PM), <https://www.theverge.com/2016/10/26/13424976/moma-nyc-art-original-emoji-acquisition>.

43. *Id.*

B. EMOJIS AND INCREASED POPULARITY

Before gaining worldwide popularity, emoji use was largely confined to Japan.⁴⁴ While rival companies copied NTT DoCoMo's emojis, the symbols could not be used across different networks, including international ones, until 2010 because of the Unicode Consortium's standardization requirement.⁴⁵ The Unicode Consortium administers the Unicode Standard with the goal of developing, promoting, and maintaining software internalization.⁴⁶ In 2010, the emojis were incorporated into the Unicode Standard, allowing their use across various networks and platforms.⁴⁷ Overseas companies, like Apple, saw this as an opportunity to launch emojis worldwide.⁴⁸ Apple did so in 2011 by launching an emoji keyboard in its iOS update.⁴⁹ Android followed suit shortly after.⁵⁰

The year 2014 marked the "Great Emoji Politicization," which resulted from a call for more cultural and social representation in emoji categories such as food, sexuality, and flags.⁵¹ In 2015, the Unicode Standard diversified emojis by adding more skin tones, individuals wearing turbans and hijabs, and women with hard hats and stethoscopes.⁵² More recently, the Unicode Standard added gender-neutral emojis, emojis for individuals with disabilities, and other symbols to represent a spectrum of users.⁵³ It quickly became apparent that emojis were a significant and well-understood language of the digital age.⁵⁴ With about 92% of people now using emojis online,⁵⁵ this new form of communication transcends cultural and language barriers.⁵⁶

44. Prisco, *supra* note 34.

45. *Id.*

46. *The Unicode Consortium*, UNICODE.ORG, <https://unicode.org/consortium/consort.html> (last visited Feb. 18, 2023).

47. Prisco, *supra* note 34; Larry Pilotto, *Unicode 101: An Introduction to the Unicode Standard*, INTERPRO, <https://www.interproinc.com/unicode-101-an-introduction-to-the-unicode-standard> (last visited Feb. 18, 2023) ("Unicode enables a single software product or a single website to be designed for multiple platforms, languages and countries (no need for re-engineering) which can lead to a significant reduction in cost over the use of legacy character sets.").

48. Prisco, *supra* note 34; Pardes, *supra* note 40 (detailing the increase in popularity of emojis and its expansion to overseas companies).

49. Pardes, *supra* note 40.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Clive Thompson, *The Emoji Is the Birth of a New Type of Language (No Joke)*, WIRED (Apr. 19, 2016, 5:27 AM), <https://www.wired.com/2016/04/the-science-of-emoji/?redirectURL=https://www.wired.com/2016/04/the-science-of-emoji>.

56. *Id.* (exploring emojis as a new type of language).

Language is ever-evolving and assumes new meanings that reflect the time and place an individual uses it in.⁵⁷ Dr. Framroze, an adjunct lecturer for the Online Masters of Communication Management Program at the University of Southern California, anticipates that emojis will continue to evolve like any language does.⁵⁸ Emojis evolved from emoticons, much like how French and Italian evolved from Latin.⁵⁹ Technology plays a significant role in emoji development by popularizing the use of emojis in text messages.⁶⁰ As consumers increasingly rely on mobile devices, they will continue to look for enhancements in mobile messaging.⁶¹ Despite emojis' ever-evolving nature, they still limit digital communication to the expressions and symbols within a given set of emojis.⁶² However, there are already alternatives to emojis, such as Animoji.⁶³ Introduced by Apple in 2017, Animoji tracks a user's facial expressions and animates an emoji accordingly in real time.⁶⁴ This is only the beginning of emoji development, and the future is expected to bring more exciting innovations.⁶⁵

II. INTERPRETATIVE CHALLENGES

The use of emojis as evidence carries several interpretive challenges that courts grapple with.⁶⁶ One major challenge is the ambiguous nature of emojis, as they rely on contextual information such as social and cultural norms to convey meaning and leave room for multiple interpretations between the sender and receiver.⁶⁷ Other legal challenges associated with an emoji's interpretation also exist.⁶⁸ For example, failing to display an emoji when transcripts are read aloud can be problematic because the lack of visual representation can lead to confusion and potential misinterpretations of a

57. Peter Suci, *Generation Divide: Different Age Groups Use Emojis Differently and That Isn't Likely Going to Change*, FORBES (Aug. 24, 2021, 9:11 AM), <https://www.forbes.com/sites/petersuci/2021/08/24/generation-divide-different-age-groups-use-emojis-differently-and-that-isnt-likely-going-to-change/?sh=3e96f6795357>.

58. *Id.*

59. *Id.*

60. *Id.*

61. Julia Rega, *Evolving Emojis: Designing for the New Face of Messaging*, DESIGNERS, <https://www.toptal.com/designers/ui/emoji-evolution> (last visited Feb. 18, 2023).

62. *Id.*

63. *Id.*; Tom Warren, *Apple Announces Animoji, Animated Emoji for iPhone X*, THE VERGE (Sept. 12, 2017, 2:31 PM), <https://www.theverge.com/2017/9/12/16290210/new-iphone-emoji-animated-animoji-apple-ios-11-update>.

64. Rega, *supra* note 61.

65. Suci, *supra* note 57.

66. Matthew Verga, *Emoji in eDiscovery: Technical and Interpretive Challenges*, CONSILIO, <https://www.consilio.com/2021/07/emoji-in-ediscovery-technical-and-interpretive-challenges> (last visited Jan. 13, 2022).

67. *Id.*

68. *Id.*

given communication.⁶⁹ Ultimately, these challenges pose a formidable task for the courts as they search for the most appropriate method to interpret emojis.⁷⁰

A. AMBIGUOUS MEANINGS OF EMOJIS

Similar to words, emojis can have multiple meanings.⁷¹ For example, depending on numerous factors, the “folded hands” emoji (🙏) can symbolize a prayer, a high five, or a way to convey please and thank you.⁷² A user’s societal background can also affect the emoji’s meaning.⁷³ For instance, to some people in the United States, the “eggplant” emoji (🍆) may convey a phallic reference instead of the fruit.⁷⁴ Additionally, cultural backgrounds can impact an emoji’s perception, for example with animals.⁷⁵ Cats might be viewed as pets in western culture, but might be viewed as a sacred symbol in other cultures.⁷⁶ Lastly, emojis can become outdated.⁷⁷ For example, while teens in the 2010s used the “face with tears of joy” emoji (😂) to make or respond to jokes, teens in the 2020s have moved to the “skull” emoji (💀), “loudly crying” emoji (😭), and even the “chair” emoji (🪑), for the same purpose and now view the “face with tears of joy” emoji (😂) as uncool.⁷⁸

The ambiguous meaning behind emojis is intentional.⁷⁹ In fact, the Unicode Standard prefers to adopt ambiguous emojis because it allows users to convey a wide range of potential concepts through a singular image.⁸⁰ However, an emoji with multiple meanings poses interpretive challenges because there is no catalog or dictionary containing all of an emojis’ various interpretations.⁸¹ While the Unicode Standard provides a short description of

69. Marilyn M. McMahon & Elizabeth A. Kirley, *When Cute Becomes Criminal: Emoji, Threats and Online Grooming*, 21 MINN. J.L. SCI. & TECH. 37, 78 (2019).

70. See generally Eric Goldman, *Emojis and the Law*, 93 WASH. L. REV. 1227 (2018) [hereinafter *Emojis and the Law*] (detailing interpretative challenges involved with emoji interpretation).

71. *Id.* at 1246.

72. *Id.* at 1247. Factors such as the tone and topic of the conversation, religion, social customs, previous conversations or interactions, intent, and platform can all impact the meaning of the “folded hands” emoji; Janelle Neary, *What Does the 🙏 Emoji Mean?*, SWEET HIGH (Sept. 3, 2022), <https://www.sweethigh.com/read/what-the-person-with-folded-hands-emoji-means-090322>.

73. *Emojis and the Law*, *supra* note 70, at 1247.

74. *Id.* at 1252.

75. *Id.*

76. *Id.*

77. See Kaya Yurieff, *Sorry, Millennials. The [Face with Tears of Joy] Emoji Isn’t Cool Anymore*, CNN BUS. (Feb. 15, 2021, 9:36 AM), <https://www.cnn.com/2021/02/14/tech/crying-laughing-emoji-gen-z/index.html> (providing generational differences in emoji interpretation between millennials and Gen Z).

78. *Id.*; Elena Cavender, *What is Going on With the Chair Emoji on TikTok?*, MASHABLE (Sept. 15, 2021), <https://mashable.com/article/chair-emoji-meaning-explanation>.

79. *Emojis and the Law*, *supra* note 70, at 1246.

80. *Id.*

81. *Id.* at 1247.

each emoji, these descriptions can be deceptive because they do not and cannot include all potential meanings.⁸² Additional interpretive challenges stemming from the lack of a comprehensive emoji catalog or dictionary arise when other factors are at play, such as generational gaps, the introduction of new emojis, and cultural differences.⁸³

B. LEGAL CHALLENGES: INTERPRETING EMOJIS IN COURT

Traditionally, courts are accustomed to interpreting legal text rather than visual images; however, with the emergence of emojis, courts must adapt to this new form of communication.⁸⁴ The greatest challenge facing courts is deciphering a sender's intent behind the emoji.⁸⁵ A single emoji can change the entire meaning of a textual message, and an emoji that has multiple meanings can further confuse courts.⁸⁶ Some lawyers are turning towards seminars, informal meetings, and academic papers to help decipher ambiguous emojis.⁸⁷ On the other hand, some judges choose not to include actual images of emojis in their opinions at all.⁸⁸ Likewise, popular legal search engines such as LexisNexis and Westlaw omit emojis entirely or replace them with verbal descriptions of the image.⁸⁹ In cases where emojis are scattered across multiple text messages, emails, and social media accounts, some prosecutors choose to omit the emojis or fail to direct juries to the emojis when reading transcripts, based on what best serves their case.⁹⁰ Each of these respective practices can alter the overall message that the sender intended to convey, causing courts to interpret communications incorrectly.⁹¹

82. *Id.* at 1247–48.

83. *See id.* at 1249–51 (discussing how face emojis pose extra interpretative challenges).

84. Erin Janssen, *Hearsay in the Smiley Face: Analyzing the Use of Emojis as Evidence*, 49 ST. MARY'S L.J. 699, 700 (2018).

85. *Id.* at 713–14.

86. *Id.* at 714.

87. Mike Cherney, *Lawyers Faced with Emojis and Emoticons Are All ☹️(ಠ_ಠ)ಠ_ಠ*, WALL ST. J. (Jan. 29, 2018, 11:39 AM), <https://www.wsj.com/articles/lawyers-faced-with-emojis-and-emoticons-are-all-1517243950?mod=e2fb>.

88. Olivia Parise, Note, *Little Pink Flower with a Darker Story to Tell: The Role of Emojis in Online Human Trafficking and Potential FOSTA-SESTA Liability*, 11 UNIV. MIAMI RACE AND SOC. JUST. L. REV. ISSUE. 52, 68 (2020); Stephen Harrison, *How Emojis Have Invaded the Courtroom*, SLATE: FUTURE TENSE (Nov. 26, 2019, 7:30 AM), <https://slate.com/technology/2019/11/emoji-court-cases-crime-free-speech-contract-law.html>.

89. Parise, *supra* note 88, at 68.

90. McMahon & Kirley, *supra* note 69 at 78.

91. Parise, *supra* note 88, at 68–69.

C. DEFINING EMOJIS

Slang is a non-standard form of communication that courts frequently encounter and, like emojis, requires additional interpretation.⁹² Some courts have turned to Urban Dictionary, a crowd-sourced website where users can write and upvote definitions for slang terms, to decipher the colloquialisms in cases and to interpret slang.⁹³ While Urban Dictionary contains some reliable content, users also create content for solely entertainment purposes.⁹⁴ For instance, users created and voted the top-ranked definition for homework as a legal form of torture.⁹⁵ According to Professor Greg Lastowka, Urban Dictionary can be a reasonably reliable source of evidence, despite the varying definitions.⁹⁶ However, he clarifies that a court would not use Urban Dictionary to define a term that could potentially determine the outcome of a case, but may use it as a supplementary source.⁹⁷ Moreover, he elaborates that context is an important consideration when analyzing these slang terms and suggests that having a speaker testify in a legal proceeding about the meaning of a term would provide invaluable evidence.⁹⁸

III. EMOJIS AND EVIDENTIARY CHALLENGES

Due to the global explosion of emojis in online communication, it is inevitable that emojis have been—and will continue to be—offered as evidence.⁹⁹ Among other threshold inquiries, offering emojis as evidence presents several evidentiary challenges for the courts including, but not limited to, authentication.¹⁰⁰ As a result, legal professionals are increasingly required to navigate the complexities of interpreting emojis to offer them as evidence in court.¹⁰¹ Like any other kind of evidence, emojis will only be

92. Jacqui Merrill, *Using Urban Dictionary to define slang in the courtroom? YOLO.*, CAMPBELL L. OBSERVER (June 27, 2013), <http://campbelllawobserver.com/using-urban-dictionary-to-define-slang-in-the-courtroom-yolo>.

93. *Id.*

94. *Id.*

95. *Homework*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=Homework> (last visited Jan. 6, 2023).

96. *Talk of the Nation: Why Urban Dictionary Comes in Handy on The Witness Stand*, NPR (May 22, 2013, 1:00 PM), <https://www.npr.org/2013/05/22/186048338/why-urban-dictionary-comes-in-handy-on-the-witness-stand>.

97. *Id.*

98. *Id.*

99. See Thompson, *supra* note 55.

100. Kevin F. Brady et al., *The Sedona Conference Commentary on Esi Evidence & Admissibility*, 22 SEDONA CONF. J. 83, 163 (2021).

101. Heather Leah King, *Emojis and Emoticons: How Courts and Litigators are Dealing with Interpretation of Digital Wordless Communications*, ABA (Jan. 1, 2022),

admitted as evidence if they are relevant, meaning they must have a tendency to prove or disprove an element of the case.¹⁰² Authentication is a component of relevancy and requires that the evidence at hand be sufficient to support a finding that it is what it is claimed to be.¹⁰³ In the case of emojis, this means ensuring that the meaning, context, and tone of the emojis are understood.¹⁰⁴ Attorneys can rely on various means to meet the authentication requirement, such as through an analysis of the emoji's visual representation or the surrounding context, which can be supported or proven with witness testimony.¹⁰⁵ However, due to the absence of court guidelines for emoji interpretation, authenticating emojis is a challenging task for attorneys and can easily lead to misunderstandings and misinterpretations.¹⁰⁶

While courts have long interpreted other forms of nonverbal communication, emojis have unique attributions that require more careful consideration.¹⁰⁷ Goldman describes three key differences that distinguish emojis from other forms of nonverbal communication: (1) emojis are small and pose a greater risk of misinterpretation; (2) users can convey regional and community-specific dialect with emojis; and (3) visual discrepancies on different platforms can cause the sender and receiver to see significantly different depictions.¹⁰⁸

Specifically, an attorney must analyze the potential: (1) visual discrepancies and (2) context, as impacted by societal, cultural, and environmental factors, to resolve misunderstandings.¹⁰⁹ Moreover, an attorney must resolve any potential disconnects within the court.¹¹⁰ Today, as many as four generations may be working together on a case; emoji interpretation amongst older generations tends to be literal, while younger generations tend to have sarcastic or metaphorical interpretations.¹¹¹ These distinctive features render the traditional methods of interpreting nonverbal

https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2022/emojis-emoticons.

102. FED. R. EVID. 401.

103. FED. R. EVID. 901(a).

104. Brady, *supra* note 100, at 148.

105. *Id.*; FED. R. EVID. 901(b)(4) (“Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances” can be used to satisfy the requirement); FED. R. EVID. 901(b)(1) (“Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be” can be used to satisfy the requirement).

106. King, *supra* note 101.

107. *What’s New with Emoji Law*, *supra* note 6.

108. *Id.*

109. Brady, *supra* note 100, at 146-47.

110. *From Baby Boomers to Millennials[sic]: Working Side by Side*, PRI CT. REPORTING, <https://prioio.com/baby-boomers-millennials-working-side-side> (last visited Feb. 22, 2023).

111. *Id.*; 🧐🧐 *The Universal Language of Emojis — and How Different Generations Interpret Them*, PHYSICIANS MUT., <https://www.physiciansmutual.com/web/community/article-title/the-universal-language-of-emojis-and-how-different-generations-interpret-them>.

communication inadequate, and emphasize the need for updated court guidelines to better accommodate the interpretive needs of emojis.¹¹²

A. VISUAL REPRESENTATION

An emoji can give rise to a visual discrepancy between the sender and recipient in three different instances: (1) when both the sender and recipient are using the same platform but different generational versions of the platform's software; (2) when a sender sends Unicode-coded emoji; and (3) when a sender sends a non-Unicode emoji on a different platform.¹¹³ Consider, for example, the "partying face" emoji (🥳).¹¹⁴ On an Apple device, the emoji has a blue and pink party hat that points left, square-shaped confetti surrounding its face, and puckered lips.¹¹⁵ In contrast, on a Samsung device, the emoji has a pink-striped hat, rectangle-shaped confetti surrounding its face, and no puckered lips (Apple: 🥳; Samsung: 🥳; Google: 🥳).¹¹⁶ While seemingly trivial, these differences can result in significant visual differences in emojis to the point where the sender and receiver can interpret the meaning differently.¹¹⁷ This example highlights how a graphic discrepancy reflects changes in the emoji's face, color, outline, or shape.¹¹⁸ Given the various instances that can contribute to discrepancies in emojis, there is a heightened risk that both senders and recipients may misunderstand the intended meaning of an emoji.¹¹⁹

A study conducted by a research group at the University of Minnesota highlights a disagreement between sentiments and semantics that resulted from cross-platform discrepancy.¹²⁰ Online surveys were sent to 334 individuals who were presented with twenty-two emojis across five major platforms: Apple, Google, Microsoft, Samsung, and LG.¹²¹ One of the largest discrepancies existed with the "grinning face with smiling eyes" emoji (Apple: 😊; Google: 😄).¹²² Participants interpreted the Google rendering of that emoji to imply blissful happiness, while the Apple rendering was

112. *Id.*

113. *Emojis and the Law*, *supra* note 70, at 1254.

114. *Partying Face*, EMOJIPEDIA.ORG, <https://emojipedia.org/partying-face> (last visited Feb. 22, 2023).

115. *Id.*

116. *Id.*

117. *Emojis and the Law*, *supra* note 70, at 1255.

118. *Id.*; Alexa Blaise, *Your Emoji Can Be Used Against You*, 47 Vt. Bar J. 36-37 (2021).

119. *Emojis and the Law*, *supra* note 70, at 1257, 1262.

120. Hannah Miller et al., "Blissfully Happy" or "Ready to Fight":[sic] *Varying Interpretations of Emoji*, GROUPLENS RSCH, U. MINN. (2016), https://grouplens.org/site-content/uploads/Emoji_Interpretation.pdf.

121. *Id.*

122. *Id.*

perceived as an incitement to a fight.¹²³ In response to these findings, the research group recommended standardizing emojis across platforms to reduce the variations of interpretations and the likelihood of miscommunication.¹²⁴

B. CONTEXT

While some courts have confronted emoji interpretation, few courts have thoroughly interpreted an emoji as used in colloquial conversations.¹²⁵ The following sources offer insight into interpreting emojis in colloquial conversations using societal, cultural, and environmental context.¹²⁶ Accordingly, the failure to consider the impact that context has on the meaning of an emoji can amount to the acceptance of willful blindness and a miscarriage of justice.¹²⁷

1. Societal Context

Language and communication styles evolve over time and are shaped by societal norms and contexts.¹²⁸ New generations often create unique ways of expressing themselves and adapt language to meet their needs, which can potentially lead to misunderstandings and miscommunication.¹²⁹ In particular, younger generations, who have grown up with digital technology, may use emojis differently than older generations, who may be less familiar with them.¹³⁰ Dr. Bonita Sharif highlighted this difference in a survey, which determined that emoji interpretations differ by age and gender.¹³¹ Participants across these different demographics interpreted six of nine emojis similarly.¹³² Nevertheless, younger respondents interpreted the “unamused face” emoji (😏) as conveying anger, while older respondents

123. *Id.*

124. *Id.*

125. Eric Goldman, *Troublesome Emojis in Criminal Cases Guest Blog Post*, TECH. & MKTG. L. BLOG (Jan. 6, 2020), <https://blog.ericgoldman.org/archives/2020/01/troublesome-emojis-in-criminal-cases-guest-blog-post.htm> (discussing emojis appearing in criminal cases).

126. *See infra* Part III.

127. *Id.*

128. *Language, Society, and Culture*, U. MINN. LIBR., <https://open.lib.umn.edu/communication/chapter/3-4-language-society-and-culture> (last visited Feb. 22, 2023).

129. *Cf. id.* (“Culturally biased language can make reference to one or more cultural identities, including race, gender, age, sexual orientation, and ability.”).

130. Suci, *supra* note 57.

131. Scott Schrage, *Emoji Interpretations Can Vary by Age, Gender*, NEB. TODAY (Mar. 27, 2019), <https://news.unl.edu/newsrooms/today/article/emoji-interpretations-can-vary-by-age-gender>.

132. *Id.*

interpreted it as conveying disgust.¹³³ The study emphasizes the importance of recognizing that emojis are subject to multiple interpretations.¹³⁴ Emojis can convey a wide range of emotions and expressions, and their meaning can be influenced by an individual's age, background, or personality.¹³⁵

a. Application in Cases

Legal cases provide examples of how the interpretation of emojis is influenced by society.¹³⁶ These cases are discussed further when this Note proposes court guidelines in Part IV.¹³⁷

In *Ghanam v. Does*, the plaintiff, a public official in Michigan, sought to uncover the identities of several defendants who made defamatory statements about him on the internet.¹³⁸ Specifically, in an online comment alleging that the plaintiff was a thief, the defendant used the emoticon that looks like a face sticking its tongue out (:P).¹³⁹ The court determined that the statement was not seeking to assert an actual fact about the official's conduct because the use of the emoticon made it clear that the commenter was joking.¹⁴⁰ In reaching its decision, the court derived the meaning of the emoticon by using a dictionary.¹⁴¹ The court reasoned that a reasonable reader would not consider the statement to be defamatory by considering the sarcastic manner of the statements, the use of the emoticon, and the far-fetched suggestions of theft.¹⁴² Ultimately, the court held that the comments were intended to ridicule the plaintiff rather than assert knowledge of an actual fact.¹⁴³

The following case acknowledges the possibility of multiple societal interpretations of a given emoji, interpreting a student's use of an emoji as being both violent and sarcastic.¹⁴⁴ In *J.S. v. Grand Island Public Schools*, a middle school student, challenged her school administrators' allegation that she communicated an intent to commit a violent attack on the school after she anonymously posted the statement "Tomorrow is gonna be hella fire 🔥

133. *Id.*

134. *Id.*

135. U. MINN. LIBR., *supra* note 128.

136. See generally Amjad Ali, *The Importance of Studying Case Laws*, LINKEDIN (Aug. 8, 2023), <https://www.linkedin.com/pulse/importance-studying-case-laws-amjad-ali>.

137. See *infra* Part IV.

138. *Ghanam v. Does*, 845 N.W.2d 128, 132 (Mich. Ct. App. 2014).

139. *Id.* at 145.

140. *Id.*

141. *Id.* at 133 n.4 (citing RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY (2003)).

142. *Ghanam*, 845 N.W.2d at 133.

143. *Id.* at 146.

144. *J.S. v. Grand Island Pub. Schs.*, 899 N.W.2d 893, 897 (Neb. 2017).

be there [school].”¹⁴⁵ The student testified that the inclusion of fire in her statements intended to communicate the message that school was “good” or “cool.”¹⁴⁶ The court acknowledged that the student’s post was open to multiple interpretations, including but not limited to one of violence.¹⁴⁷ Despite this, the school upheld the student’s 15-day suspension.¹⁴⁸

The following case provides an example of how a court considered testimony from a minor’s peers to analyze the meaning of the minor’s emojis.¹⁴⁹ However, even if overwhelming testimony indicates one meaning, courts still have to consider the total societal context.¹⁵⁰ In *People v. L.F.*, a California court held that a minor’s (“L.F.”) tweets constituted threats under California law and subsequently denied her request to reduce the felony to a misdemeanor.¹⁵¹ During school hours, L.F. “tweeted” about obtaining a gun, accompanying the tweet with five “face with tears of joy” emojis (😄), and stating that she was not scared to go to jail for shooting everyone.¹⁵² L.F.’s best friend testified that she did not take the tweets seriously.¹⁵³ She interpreted the “face with tears of joy” emojis (😄) to mean that the defendant was joking.¹⁵⁴ L.F.’s sister also testified that the laughing emojis implied that L.F. was joking, elaborating that no one in their family owned a gun.¹⁵⁵ Moreover, the defendant argued that since most of her tweets accompanied laughing emojis and vernacular to imply that she was joking, her tweets were not serious.¹⁵⁶ The testimony from L.F.’s friend and sister offered insight that she did not intend to carry out the threat.¹⁵⁷ Additionally, the court considered her probation report, indicating bad grades, a history of defiant behavior, and a discussion of mental health.¹⁵⁸ The court concluded that, even if L.F. published the tweets as a joke, it could not treat it as such because of the presence of the threatening language, the probation report, and the current state of our society, in reference to gun violence and school shootings.¹⁵⁹

145. *Id.* at 896.

146. *Id.*

147. *Id.* at 897.

148. *Id.*

149. *People v. L.F. (In re L.F.)*, No. A142296, 2015 Cal. App. LEXIS 3916, at *6 (Cal. Ct. App. June 3, 2015).

150. *Id.* at *23–24 (describing context behind the minor’s tweets, such as grades, mental health, and parental relationship).

151. *Id.* at *6, *23.

152. *See id.* at *2 (“Among Minor’s tweets were the following: ‘If I get a gun it’s fact I’m spraying [five laughing emojis] everybody better duck or get wet’; ‘I’m dead ass [three laughing emojis] not scared to go to jail for shooting up FHS warning everybody duck . . .’”). Emoji users typically refer to the “face with tears of joy” emojis (😄) as the “laughing” emoji.

153. *Id.* at *6.

154. *Id.*

155. *Id.*

156. *Id.* at *12.

157. *Id.* at *6.

158. *Id.* at *23.

159. *Id.* at *24.

Thus, the court denied L.F.'s request to have the felony reduced to a misdemeanor.¹⁶⁰

The following case exhibits how a court comprehensively analyzed the societal context of a conversation to decipher the meaning of a minor's use of emojis.¹⁶¹ In *State v. D.R.C.*, a Washington court reversed a minor's ("D.R.C.") guilty adjudication and disposition because her statements did not constitute a true threat.¹⁶² D.R.C. texted her friend Joshua to vent about her mother, and Joshua joked, "haha beat her" to which D.R.C. responded, "Bet imma get her killed if anything."¹⁶³ Following this statement, the conversation indicated that the D.R.C. and Joshua were joking through Joshua's use of "lol" and D.R.C.'s use of the "rolling on the floor laughing" emoji (🤣).¹⁶⁴ In assessing D.R.C.'s conversation, the court consulted an emoji dictionary in addition to conducting a comprehensive analysis, which considered the joking tone of the messages, Joshua's interpretation via his responses, teenage frustration, and previous conversations with another friend.¹⁶⁵ Importantly, it acknowledged that the lack of witness testimony hampered its analysis.¹⁶⁶ The court concluded that while D.R.C.'s messages were "distastefully violent," the combination of the initialism and emojis distinctively conveyed sarcasm.¹⁶⁷

Undoubtedly, the use of emojis in digital communication has become increasingly popular amongst newer generations, and their meaning is constantly evolving and changing.¹⁶⁸ This surge in popularity can be attributed to their ability adapt to the shifting nuances of language and societal trends.¹⁶⁹ For instance, as societal values continue to reflect the need for diversity, equity, and inclusion, new emojis may be developed to reflect those changes, representing even more skin tones, gender identities, and

160. *Id.* at *23.

161. *State v. D.R.C.*, 467 P.3d 994, 1001 (Wash. Ct. App. 2020) ("Given the vagueness of D.R.C.'s statement that she wanted to kill her mother, and the other contextual indicators, the statement to Lexy is not reasonably interpreted as a true threat.").

162. *Id.* at 998 ("The record shows nothing more than odious expressions of frustration. D.R.C.'s guilty adjudication and disposition is therefore reversed.").

163. *Id.* at 998-99.

164. *Id.* at 1002 ("Even if Joshua had been troubled by D.R.C.'s comments, the context of the text messages is still not indicative of a true threat. Immediately after Joshua's 'lol' text, D.R.C. reiterated the joking nature of the exchange by accenting her message with an emoji entitled 'rolling on the floor laughing,' 🤣.").

165. *See id.* at 1002 n.10, 1001-02 (describing the court's analysis). In a previous conversation, D.R.C. and her friend Lexy discussed harming or killing a mutual friend, which also exhibited a similar joking tone. *Id.* at 1002. The messages included the following emojis, the "face with tears of joy" emoji (😂), the "woman shrugging" emoji (🤷), the "smiling face with horns" emoji (😎), the "zany face" emoji (🤪), and the "red heart" emoji (❤️). *Id.*

166. *State v. D.R.C.*, 467 P.3d 994, 1001 (Wash. Ct. App. 2020).

167. *Id.* at 1002.

168. Suci, *supra* note 57.

169. *Id.*

abilities.¹⁷⁰ Societal context influences the use of an emoji and is an important consideration in accurately interpreting the meaning of emojis in court.¹⁷¹

2. Cultural Context

Over time, as various cultures interact, language undergoes dynamic changes.¹⁷² Culture plays a significant role in shaping an individual's beliefs, values, and communication styles.¹⁷³ As emojis spread globally beyond Japan, they assimilated into different cultures and acquired new meanings in each.¹⁷⁴ Particularly, in conversations between individuals from different cultural backgrounds, the interpretations of emojis are prone to change, especially when references to hand gestures, religion, or popular culture are involved.¹⁷⁵

The meaning of emojis can change drastically when used in the context of different cultures.¹⁷⁶ For example, the “waving hand” emoji (👋) can mean hello or goodbye in western culture.¹⁷⁷ In eastern culture, the same emoji is commonly used to break up relationships or to beckon animals, carrying a connotation of rudeness when used.¹⁷⁸ A similar discrepancy exists regarding the “baby angel” emoji (👼).¹⁷⁹ Although often conveying love and innocence to conversations in western culture, the angel carries a message of death in eastern culture.¹⁸⁰ Additionally, the meaning of the “peace” sign varies, representing peace in American culture, but obscenity in British culture.¹⁸¹ These cultural differences in emoji interpretation highlight the challenges that courts may encounter when interpreting emojis in cross-cultural communications.¹⁸²

170. Pardes, *supra* note 40.

171. Suciu, *supra* note 57.

172. Jelena Kalaba, *How Different Cultures Perceive Emojis in Workplace Communication*, PUMBLE (Dec. 10, 2021), https://pumble.com/blog/culture-emoji/#How_emojis_spread_to_different_cultures.

173. *Id.*

174. *Id.*

175. *Id.*; see also Gayle Cotton, *Gestures to Avoid in Cross-Cultural Business: In Other Words, 'Keep Your Fingers to Yourself!'*, HUFFPOST (June 13, 2013, 5:16 PM), https://www.huffpost.com/entry/cross-cultural-gestures_b_3437653.

176. Kalaba, *supra* note 172.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

a. Application in Cases

While not an American case, the following case illustrates how cultural background can impact the meaning of an emoji.¹⁸³ In *S.W. Terminal LTD v. Achter Land & Cattle LTD*, a Canadian court ruled that the “thumbs up” emoji (👍) can be considered a valid signature for contracts.¹⁸⁴ Notably, the court described popularity of emojis and their interpretive challenges in courts as a “new reality in Canadian society” that the courts will have to adapt to.¹⁸⁵ The case involved a grain purchaser, Kent Mickleborough, who texted a farmer, Chris Achter, asking him to confirm the contract that he had sent a picture of.¹⁸⁶ Achter responded with the “thumbs up” emoji (👍), and Mickleborough assumed that this was the Achter’s way of confirming the agreement.¹⁸⁷ The court analyzed the meaning of the emoji by turning to Dictionary.com, which described the emoji as representing assent or approval in western cultures.¹⁸⁸ Analogously, Dictionary.com also defines the “thumbs up” emoji (👍) as a gesture that cultures, such as Iraq, Afghanistan, Australia, and Greece, consider to be obscene.¹⁸⁹

Indeed, emojis are an essential part of communication, and this has led some individuals to describe emojis as a universal language.¹⁹⁰ While emojis have become a global phenomenon, emoji usage still varies across regions and languages and will continue to constantly change and develop new meanings.¹⁹¹ Furthermore, emojis may have different connotations in different countries or regions, making it difficult to accurately interpret their meaning without an understanding of cultural context.¹⁹² Emojis transcend

183. See *S.W. Terminal Ltd. v. Achter Land*, 2023 Sask. R. 116, ¶ 68 (Can. Sask. K.B.); Michael Levenson, *Canadian Court Rules 👍 Emoji Counts as a Contract Agreement*, N.Y. TIMES (July 7, 2023), <https://www.nytimes.com/2023/07/07/world/anada/anada-thumbs-up-emoji-contract.html>.

184. Levenson, *supra* note 183.

185. *S.W. Terminal Ltd. v. Achter Land*, 2023 Sask. R. 116, ¶ 40 (Can. Sask. K.B.).

186. *Id.* at ¶ 23, 25; see also Levenson, *supra* note 183.

187. *S.W. Terminal Ltd.*, 2023 Sask. R. 116, at ¶ 23.

188. *Id.* at ¶ 31.

189. 👍 *Thumbs Up emoji*, DICTIONARY.COM (Mar. 7, 2018), <https://www.dictionary.com/e/emoji/thumbs-up-emoji>; see also Heather King, *Emojis and Emoticons: Interpreting Digital Wordless Communications*, ABA (Apr. 5, 2022), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2022/march-april/emojis-and-emoticons-interpreting-digital-wordless-communications; Kelly, *supra* note 21; Brendan Koerner, *What Does a “Thumbs Up” Mean in Iraq?*, SLATE (Mar. 28, 2003), <https://slate.com/news-and-politics/2003/what-does-a-thumbs-up-mean-in-iraq.html>.

190. See generally Kristina Temelkova, *Emojis as a Universal Language*, MILESTONE LOCALIZATION (Mar. 2, 2022), <https://www.milestoneloc.com/emojis-as-a-universal-language>.

191. *Id.*

192. Kalaba, *supra* note 172.

language, making them easily accessible, but still maintain cultural specificity.¹⁹³

3. Environmental Context

Emoji interpretation can heavily depend on the environmental context in which individuals use them.¹⁹⁴ Taking into account environmental context, such as the relationship between the sender and receiver, or the topic of conversation, can ensure that the court is able to properly interpret the intended meaning.¹⁹⁵ For example, in a romantic conversation, an individual may use the heart emoji instead of text to express love, whereas in a scientific conversation the heart emojis may represent the organ.¹⁹⁶

a. Application in Cases

The following case depicts how a seemingly innocent emoji can take on the opposite meaning when associated with its specific environmental context, as demonstrated in the instance of gang-related activity.¹⁹⁷ In *People v. Smith*, emoji evidence supported a California court's conviction of a defendant for intimidating a witness on his appeal.¹⁹⁸ The defendant posted a photograph of the witness with derogatory comments, stating that the witness was the one who reported the defendant's friend to law enforcement while using the "eyes" emoji (👁️), the "backhand index finger pointing down" emoji (👇), the "OK hand sign" emoji (👌), the "rat" emoji (🐭), the "explosion" emoji (💣), and the "gun" emoji (🔫).¹⁹⁹ The court analyzed the post and determined that the defendant tried to incite his viewers to take violent actions against the witness.²⁰⁰ Specifically, an officer, who was an expert specialized in gang-related activity testified that the post encouraged viewers of the defendant's Facebook page to take violent actions against the

193. Rakhi Bose, *Universal Language or Culturally Specific Symbols, What Do Emojis Really Mean?*, NEWS 18 (June 30, 2018, 6:26 PM), <https://www.news18.com/news/buzz/universal-language-or-culturally-specific-symbols-what-do-emojis-really-mean-1796371.html>.

194. Qiyu et al., *supra* note 1.

195. *See id.* (discussing environmental context).

196. *See generally* Addison Aloian, *The True Meaning Of Every Color And Type Of Heart Emoji*, WOMEN'S HEALTH, <https://www.womenshealthmag.com/sex-and-love/g35382506/heart-emojis-meaning> (last updated Nov. 1, 2023).

197. *People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691, at *19 (Ct. App. Mar. 12, 2019).

198. *Id.* at *2.

199. *Id.* at *4.

200. *Id.* at *19; *see also* Learn About Jury Service, U.S. CTS., <https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service> (last visited Nov. 3, 2022).

witness in an effort to punish and deter future cooperation with law enforcement.²⁰¹ Moreover, he analyzed the “OK hand sign” emoji (👌) to represent the letter “b,” referring to the defendant’s gang.²⁰² The court determined that the jury could have reasonably inferred that the witness cooperated with law enforcement, given the “rat” emojis (🐭), and that his viewers should kill her so that she would be unable to testify against his friend.²⁰³ The court held that the jury could have reasonably concluded that the photograph and comments were incriminating.²⁰⁴

The following case highlights the challenges of interpreting emojis due to their ambiguous nature and varying interpretations, specifically in the context of drug-related activity.²⁰⁵ In *Johnson v. State*, a Maryland court was unable to sustain the defendant’s conviction for gross negligence involuntary manslaughter because of the defendant’s ambiguous use of emojis in the context of drugs resulting in a fatal overdose.²⁰⁶ The defendant testified that he used the “fire” emoji (🔥) when discussing drugs to signify their high quality.²⁰⁷ The State’s expert in drug-related code words agreed with the defendant’s testimony regarding the meaning of the emoji.²⁰⁸ Nonetheless, there was still ambiguity behind the meaning.²⁰⁹ Despite this, the State argued that the “fire” emoji (🔥) demonstrated that the defendant knew that the drug sale was inherently dangerous and that he disregarded human life.²¹⁰

The following case substantiates that emojis can serve as a form of coded language, as exemplified in the instance of sex trafficking.²¹¹ In *People v. Jameson*, a California court relied on expert testimony to define the meaning of each emoji in a case involving sex trafficking.²¹² The defendant, a pimp, exchanged messages with a prostitute via Instagram regarding sex work.²¹³ In the course of the conversation, the defendant used the “crown” emoji (👑) as well as the “high-heeled shoe” (👠) and “money

201. *People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691, at *8–*9 (Ct. App. Mar. 12, 2019).

202. *Id.* at *19.

203. *Id.*

204. *Id.* at *20.

205. *See Johnson v. State*, 225 A.3d 769, 779 (Md. Ct. Spec. App. 2020).

206. *Id.*

207. *Id.* at 774.

208. *Id.*

209. *Id.* at 778–79 (“The State’s expert in ‘drug related code words and jargon’ testified that describing drugs as ‘fire’ means the drugs are ‘really good’ During argument, the State drew an inference from Trooper Buckius’s description of the drugs and argued that ‘really good’ means ‘really strong.’”).

210. *Id.* at 779.

211. *People v. Jamerson*, No. A153218, 2019 Cal. App. Unpub. LEXIS 940, at *5–6 (Cal. Ct. App. Feb. 6, 2019) (describing the meaning of emojis that a pimp used).

212. *Id.*; *see also* Eric Goldman, *Two Examples of How Courts Interpret Emojis*, TECH. & MKTG. L. BLOG (Mar. 17, 2019), <https://blog.ericgoldman.org/archives/2019/03/two-examples-of-how-courts-interpret-emojis.htm>.

213. *Jamerson*, 2019 Cal. App. Unpub. LEXIS 940, at *5 (Cal. Ct. App. Feb. 6, 2019).

bag” (💰) emojis.²¹⁴ The expert testified that the “crown” emoji (👑) meant the defendant was the king.²¹⁵ Furthermore, he testified that the “high-heeled shoe” emoji (👠) referred to the shoes worn by that prostitute, and that when used in conjunction with the “money bag” emoji (💰), it urged her to wear her high heels to make money.²¹⁶ The court affirmed the conviction of pimping and pandering.²¹⁷

The following case illustrates how seemingly simple emojis can convey complex meanings in certain social groups or communities.²¹⁸ In the case, *In re Bed Bath & Beyond Corporation Security Litigation* (“*Bed Bath & Beyond*”), investors brought a case against the defendant, Ryan Cohen, a well-known billionaire investor, alleging securities fraud.²¹⁹ In 2022, Cohen began purchasing shares in Bed Bath & Beyond, eventually amounting to a 9% stake.²²⁰ On August 12, 2022, Cohen tweeted in response to a derogatory news story about Bed Bath & Beyond stating, “At least her cart is full 🌕,” which allegedly mislead investors to purchase or hold Bed Bath & Beyond shares by suggesting that the stock price would increase.²²¹ Between August 16 and 17, Cohen quietly sold his entire stake, profiting \$68 million.²²² Once the news broke that Cohen sold his share, the Bed Bath & Beyond stock price plunged, causing many investors to lose money.²²³ The court acknowledged that some online communities recognize the “full moon with face” emoji (🌕) to mean to “take [the stock] to the moon,” as the investors allege, and Cohen’s use of the emoji encouraged stock investors to act.²²⁴

The meaning of emojis can vary widely across social groups, making their interpretation ambiguous and context-dependent.²²⁵ As exemplified in *Bed Bath & Beyond*, despite its innocuous appearance in discussions about astrology or space, for example, the “full moon with face” emoji (🌕) has the potential to incite the investment community.²²⁶ The cases discussed earlier,

214. *Id.* at *6.

215. *Id.*

216. *Id.*

217. *Id.*

218. *In re Bed Bath & Beyond Corp. Sec. Litig.*, No. 1:22-cv-2541, 2023 U.S. Dist. LEXIS 129613, at *16 (D.D.C. July 27, 2023).

219. *Id.* at *4.

220. *Id.*

221. *Id.* at *5.

222. *Id.* at *4.

223. *Id.* at *7.

224. *Id.* at *16.

225. See generally *People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691 (Ct. App. Mar. 12, 2019); *Johnson v. State*, 225 A.3d 769 (Md. Ct. Spec. App. 2020); *People v. Jamerson*, No. A153218, 2019 Cal. App. Unpub. LEXIS 940 (Cal. Ct. App. Feb. 6, 2019); *In re Bed Bath & Beyond Corp. Sec. Litig. (Bed Bath & Beyond)*, No. 1:22-cv-254, 2023 U.S. Dist. LEXIS 129613 (D.D.C. July 27, 2023).

226. *In re Bed Bath & Beyond Corp. Sec. Litig.*, No. 1:22-cv-2541, 2023 U.S. Dist. LEXIS 129613, at *16 (D.D.C. July 27, 2023); see also u/dumbnunt_, *Your Most Used Emoji and Your Sun Moon Rising?*, REDDIT (Jan. 30, 2022, 5:01 AM),

although predominately centered around instances of criminal activity, demonstrate the importance of relying on expert testimony to uncover emojis' ambiguous nature; this interpretation extends beyond cases concerning criminal activity.²²⁷ Therefore, in cases where a lack of consideration and understanding of the environmental context exists, the court should rely on expert testimony.²²⁸

IV. COURT GUIDELINES

Although emojis have become an integral form of digital communication, some judges continue to omit or ignore them in court.²²⁹ To foster accurate interpretation, courts should establish clear and proper guidelines for emoji interpretation to ensure that the intended meaning is accurately conveyed and that correct legal conclusions are drawn from the evidence.²³⁰ However, it should be noted that courts can only create local guidelines to assist attorneys appearing before it.²³¹ Consequently, these guidelines might still result in inconsistent outcomes from court to court.²³² While local guidelines serve as a good starting point, enactment of legislation that provides standardized guidelines for emoji interpretation could offer a uniform approach and promote consistency across different jurisdictions.²³³ Nonetheless, when interpreting emojis, courts should consider the emoji's visual representation, societal context, cultural context, and environmental context.²³⁴

Emojis are often used to convey emotions, tone, and intent—aspects that can be difficult to communicate through only text or verbal descriptions.²³⁵ The exact visual representation of an emoji can serve as a reference point for interpretation; individuals visualizing the emoji are more likely to agree on the intended meaning.²³⁶ Professor Goldman proposes three suggestions for courts to combat interpretative challenges: (1) the court

[https://www.reddit.com/r/astrologymemes/comments/sg8pne/your_most_used_emoji_and_your_sun_moon_rising;_u/softskiez,_REDDIT_\(Aug._23,_2020,_5:35_AM\),_https://www.reddit.com/gallery/1f2f7k?user_id=112800911993&web_redirect=true](https://www.reddit.com/r/astrologymemes/comments/sg8pne/your_most_used_emoji_and_your_sun_moon_rising;_u/softskiez,_REDDIT_(Aug._23,_2020,_5:35_AM),_https://www.reddit.com/gallery/1f2f7k?user_id=112800911993&web_redirect=true) (showing how an individual in the space reddit community used the “full moon with face” emoji to title their reddit post that contains a photo of the moon).

227. See generally *Emojis and the Law*, *supra* note 70.

228. See *id.*; Qiyu et al., *supra* note 1 (mentioning environmental context).

229. Parise, *supra* note 88, at 68.

230. Cf. *What's New with Emoji Law*, *supra* note 6.

231. See generally Court Rules, DUKE L. (Nov. 2017) <https://law.duke.edu/lib/research-guides/court-rules>.

232. *Id.*

233. *Id.*

234. Qiyu et al., *supra* note 1.

235. See Atanasova, *supra* note 4.

236. *Emojis and the Law*, *supra* note 70, at 1255.

must see the exact depiction of the emoji that was sent and received; (2) the fact-finder should see the exact emoji rather than hearing a verbal description; and (3) judges should display the exact emoji in their opinions.²³⁷ These approaches can help to provide more accurate and comprehensive understandings of the context and meaning of the emoji in question.²³⁸

It is crucial for courts to consider the visual representation and context in which an individual uses the emoji.²³⁹ Context falls under three categories (societal, cultural, and environmental) and can significantly influence the meaning of an emoji and play a significant role in the interpretation of emojis in digital communication.²⁴⁰ These contextual elements provide additional background information that can help to clarify an otherwise actionable statement or ambiguous use of an emoji.²⁴¹ By considering these factors, judges and factfinders can attain a more comprehensive understanding of the meaning of the emoji in question, which can help to ensure accurate and fair interpretations of the evidence.²⁴²

A. VISUAL REPRESENTATION

Courts must consider the visual representation of an emoji, especially when addressing potential miscommunications that could arise from the lack of cross-platform standardization.²⁴³ When it comes to cross-platform communication, varying depictions of the same emoji between the sender and receiver may result in a different interpretation for each party.²⁴⁴ Unfortunately, until the Unicode Standard establishes uniformity, the courts must account for cross-platform discrepancies.²⁴⁵ While some judges opt not to display an emoji in court, accurately deciphering and understanding their meanings necessitates visual depictions of emojis.²⁴⁶ Judges should mitigate potential consequences by displaying the actual depiction of both the sender's and receiver's emoji in court.²⁴⁷ Although some judges believe that replacing the emojis with a verbal description is a sufficient substitution,

237. *What's New with Emoji Law*, *supra* note 6.

238. *See id.* (providing the importance of visual representation).

239. *See* Meera Senthilingam, *What Your Emojis Say About You*, CNN, <https://www.cnn.com/2017/01/18/health/emoji-use-personality-traits-study/index> (Jan. 18, 2017, 4:02 AM) (describing how emojis offer a glimpse into an individual's demeanor).

240. Suci, *supra* note 57; Cotton, *supra* note 175.

241. Harrison, *supra* note 88.

242. *Id.*

243. *Emojis and the Law*, *supra* note 70, at 1257.

244. *What's New with Emoji Law*, *supra* note 6.

245. Miller, *supra* note 120.

246. Parise, *supra* note 88, at 68.

247. *What's New with Emoji Law*, *supra* note 6.

words may not be adequate enough to precisely describe the meaning of the emoji.²⁴⁸

For example, the Apple version of the “peach” emoji (🍑) is a common euphemism for buttocks.²⁴⁹ Anyone who is unfamiliar with the Apple-specific rendition of the “peach” emoji (🍑) will likely not understand the euphemism.²⁵⁰ When judges choose to ignore, omit, or offer verbal descriptions of the emojis instead of providing a visual representation of the exact emojis sent and received, they could unknowingly ignore a cross-platform discrepancy and potentially impact the outcome of the case.²⁵¹

B. CONTEXT

Context is another important factor that courts should consider when tackling cases involving emoji interpretation.²⁵² Since emojis are meant to be ambiguous, context alone can impact the entire meaning of an emoji.²⁵³ Particularly, courts should look at the societal context, heeding any generational differences; cultural context, taking into account whether or not the parties to the case are from different cultures; and environmental context, assessing whether or not the emojis require an expert in the field.²⁵⁴

1. Societal Context

Just as it occurs with words in a language, the meaning of emojis evolve or change over time, and as a result, societal context directly influences emoji interpretation.²⁵⁵ Namely, as new generations grow, language grows with them and adapts to their societal norms.²⁵⁶ For example, in the 1990s, older generations were not so keen on connecting with the younger generation’s new slang.²⁵⁷ Younger generations nonchalantly threw around phrases, such as “shiznit” or “da bomb,” that older generations found shocking.²⁵⁸ Fast forward to today, Generation Z, demonstrating classic language evolution, refashioned “da bomb” into “fire,” and opts to use the “fire” emoji (🔥) to enthusiastically describe something as “good” or

248. Parise, *supra* note 88, at 68.

249. *Emojis and the Law*, *supra* note 70, at 1254.

250. *Id.*

251. Parise, *supra* note 88, at 68.

252. Harrison, *supra* note 88.

253. *Emojis and the Law*, *supra* note 70, at 1246.

254. *See infra* Part IV.

255. Suci, *supra* note 57.

256. *Id.*

257. *See id.*

258. *Id.*

“cool.”²⁵⁹ Generation Z continues to reshape new meanings for emojis, and the slang and language of Millennials and older generations seem like an ancient relic.²⁶⁰ Newer generations are constantly changing the meaning of these emojis, creating a generational disconnect when it comes to emoji interpretation.²⁶¹

Due to the similarities between emoji and slang used as colloquialisms, one may assume that the best way to approach emoji interpretation would be to mirror how courts have interpreted slang.²⁶² However, the same approach will not work for emoji interpretation.²⁶³ Similar to Urban Dictionary, sources such as Emojipedia and Dictionary.com, allow users, including judges and attorneys, to search for emoji definitions.²⁶⁴ However, unlike Urban Dictionary, Emojipedia only lists the most common and apparent definition for each emoji, and Dictionary.com only defines the most popular emojis, using some linguistic nuisances.²⁶⁵ Cases like *Ghanam v. Does* represent an emoji dictionary’s ability to define the most basic and obvious meaning of an emoji.²⁶⁶ This limitation inhibits attorneys or judges from obtaining all potential interpretations of emojis that more complex cases will require.²⁶⁷

Emoji dictionaries fail to account for other less apparent uses of an emoji, and cannot provide accurate definitions for colloquial emojis uses.²⁶⁸

259. *Id.*; See e.g., *What Does FIRE Mean? Definition, Use Cases, Examples*, MMGUARDIAN, <https://www.mmguardian.com/teen-slang/fire> (last visited Jan. 28, 2024) (describing the term fire).

260. See Suci, *supra* note 57 (“Recently, we’ve seen some social media friction between Millennials and Gen Z in terms of emoji use, with new meanings being attached by Gen Z to certain emojis, leaving Millennials and older generations wondering which emoji to use or whether to use any at all. . . .”) (internal quotation omitted).

261. *Id.* (statement of Dr. Oscar Barroso Huertas) (“Millennials made these icons their own, which the previous generation had despised. . . . In the same way, Generation Z took the baton of the common way of use of those emojis, by . . . previous generations, raising it to another level, where the mixture of uses is what enriches communication.”) (internal quotation omitted).

262. Merrill, *supra* note 92.

263. *Id.*

264. See generally EMOJIPEDIA.ORG, <https://emojipedia.org> (last visited Jan. 6, 2023); DICTIONARY.COM, <https://www.dictionary.com/e/emoji> (last visited Jan. 28, 2024).

265. See generally *Eggplant*, EMOJIPEDIA.ORG, <https://emojipedia.org/eggplant> (last visited Jan. 6, 2023) (displaying a generic definition of the “eggplant” emoji as opposed to the previously discussed colloquial definitions); DICTIONARY.COM, *supra* note 264; Hannah Leah King, *Emojis and Emoticons: How Courts and Litigators are Dealing with Interpretation of Digital Wordless Communications*, ABA (Jan. 1, 2022), https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2022/jf22/king (describing how assuming that only a single definition is applicable is dangerous for emoji interpretative purposes). Although, Emojipedia does display each emoji variation on the different platforms, which may prove to be useful in some situations. See generally EMOJIPEDIA.ORG, <https://emojipedia.org> (last visited Jan. 30, 2024).

266. See *Ghanam v. Does*, 845 N.W.2d 128, 133 n.4 (Mich. Ct. App. 2014) (citing a dictionary to explain the meaning of an emoji); *S.W. Terminal Ltd. v. Achter Land*, 2023 Sask. R. 116, ¶ 31 (Can. Sask. K.B.).

267. See generally EMOJIPEDIA.ORG, *supra* note 264; DICTIONARY.COM, *supra* note 264.

268. See generally EMOJIPEDIA.ORG, *supra* note 264.

Moreover, assuming that only a single definition is applicable is dangerous, especially in court cases.²⁶⁹ As seen in *J.S. v. Grand Island Public Schools*, the defendant claimed to have used “fire” emojis (🔥) to indicate the school was “good” or “cool.”²⁷⁰ Importantly, the court acknowledged that there were multiple potential meanings for the emoji, which emphasizes the necessity for a more contextually informed analysis.²⁷¹ The student gave testimony for the meaning of the emojis because, as the court in *State v. D.R.C.* recognized, an analysis of societal context requires a consideration of many factors that an emoji dictionary alone cannot satisfy, and an absence of testimony hampers the analysis.²⁷² While an emoji dictionary can be an initial reference point, it does not sufficiently elaborate meanings of emojis for lawyers and judges to derive the unique colloquial uses.²⁷³ Thus, courts must turn to an alternative means to decipher colloquial uses of emojis.²⁷⁴

Another issue courts need to account for regarding societal context is the disparity in interpretation across generations.²⁷⁵ This problem is highlighted by the survey conducted by Dr. Bonita Sharif that suggests a difference in emoji interpretation based on the age of the interpreter.²⁷⁶ As previously noted, as many as four generations are working together in court, and due to generational differences in emoji interpretation, colloquial emojis can be especially troublesome for courts.²⁷⁷ For example, a generational divide can be seen with how the court in *J.S. v. Grand Island Public Schools* interpreted the “fire” emoji (🔥) when it based its decision on a literal definition of fire, suggesting violence, rather than the colloquial interpretation that the student suggested.²⁷⁸ Considering the likely generational difference between judges, juries, attorneys, and a defendant, especially if the defendant is a minor, the court may not recognize the potential for multiple meanings with a particular emoji.²⁷⁹

Accordingly, courts should incorporate testimony from someone who shares a similar societal background as the speaker, mirroring the approach

269. King, *supra* note 101.

270. *J.S. v. Grand Island Pub. Schs.*, 899 N.W.2d 893, 896 (Neb. 2017).

271. *Id.* at 897.

272. *Id.* at 896; *State v. D.R.C.*, 467 P.3d 994, 1001–02 (Wash. Ct. App. 2020).

273. See generally EMOJIPEDIA.ORG, *supra* note 264; DICTIONARY.COM, <https://www.dictionary.com/e/emoji> (last visited Jan. 28, 2024).

274. *Cf. People v. L.F. (In re L.F.)*, No. A142296, 2015 Cal. App. LEXIS 3916, at *6 (Cal. Ct. App. June 3, 2015).

275. See generally Suci, *supra* note 57; Schrage, *supra* note 131.

276. Schrage, *supra* note 131.

277. See PRI CT. REPORTING, *supra* note 110; *Emojis and the Law*, *supra* note 70, at 1253–54.

278. *J.S. v. Grand Island Pub. Schs.*, 899 N.W.2d at 896–97.

279. PRI CT. REPORTING, *supra* note 110 (explaining how as many as four different generations can be working together in court).

taken in *People v. L.F.*²⁸⁰ Moreover, it should recognize that a lack of testimony hampers the court's analysis, as the court acknowledged in *State v. D.R.C.*²⁸¹ There, the defendant's best friend and sister provided invaluable testimony explaining the meaning of laughing emojis, and offered insight behind the defendant's tweets, clarifying that she did not intend to carry out the apparent threats.²⁸² Testimony can be crucial in deciphering colloquial language when there are few to no alternatives available.²⁸³

2. Cultural Context

Courts should also consider cultural context as a factor when interpreting emojis.²⁸⁴ Just as a culture influences language and behavior, cultures also assign different meanings to emojis.²⁸⁵ A notable example is *S.W. Terminal LTD* where the Canadian court determined that the "thumbs up" emoji (👍) could affirm a contract, a meaning consistent with western culture.²⁸⁶ However, due to the ambiguous nature of emojis, this interpretation varies in eastern culture, with countries such as Iraq, Afghanistan, Australia, and Greece, viewing the "thumbs up" emoji (👍) or gesture to be disrespectful or offensive.²⁸⁷ If the farmer in *S.W. Terminal LTD*, Achter, identified with eastern culture, perceiving the "thumbs up" emoji (👍) or gesture as offensive rather than affirming, it would have required the court to analyze the meaning of the emoji in the context of eastern culture, potentially leading to a different outcome.²⁸⁸ Despite emojis being often regarded as a universal language that can transcend cultural barriers, they still face challenges in attaining that status due to their susceptibility to various contexts—societal, cultural, environmental, etc.—that critically impact their meaning.²⁸⁹ Accurately deciphering the meaning of an emoji, especially in cross-cultural communication, requires an understanding of the cultural context that surrounds the conversation, and outsiders typically lack this knowledge.²⁹⁰ Acknowledging these cultural

280. *People v. L.F. (In re L.F.)*, No. A142296, 2015 Cal. App. LEXIS 3916, at *6 (Cal. Ct. App. June 3, 2015) (describing how the defendant's best friend gave testimony to define the defendant's use of the emojis).

281. *State v. D.R.C.*, 467 P.3d 994, 1001–02 (Wash. Ct. App. 2020).

282. *Id.*

283. *Cf. NPR*, *supra* note 96 (detailing the use of Urban Dictionary with colloquial language).

284. *Emojis and the Law*, *supra* note 70, at 1251.

285. *Id.*

286. *See S.W. Terminal Ltd. v. Achter Land*, 2023 Sask. R. 116, ¶ 68 (Can. Sask. K.B.); King, *supra* note 189.

287. *See Koerner*, *supra* note 189; *Emojis and the Law*, *supra* note 70, at 1253.

288. *See generally S.W. Terminal Ltd. v. Achter Land*, 2023 Sask. R. 116 (Can. Sask. K.B.).

289. *See Kalaba*, *supra* note 172; Suci, *supra* note 57.

290. *Emojis and the Law*, *supra* note 70, at 1251.

differences in the courts is essential to ensure fairness, impartiality, and respect for diversity and reduce the risk of cultural misunderstandings.²⁹¹

3. Environmental Context

Interpretation of emojis can heavily depend on the environmental context in which they are used, including the relationship between the sender and receiver or the topic of conversation.²⁹² For example, courts can come across seemingly innocent emojis, such as the “OK hand sign” emoji (👌) in *People v. Smith*, the “fire” emoji (🔥) in *Johnson v. State*, or the “full moon with face” emoji (🌕) in *Bed Bath & Beyond*.²⁹³ At first glance, a court may assume that the criminal enterprise or the social group has adopted the common dictionary definition of these emojis.²⁹⁴ Rather, these specific groups took advantage of the ambiguous nature of emojis and relied on them to conceal their communications.²⁹⁵ Assuming that the groups utilized the dictionary definitions can be dangerous because the lack of requisite knowledge in these specific groups can lead to emoji misinterpretation, which would substantially impact the case.²⁹⁶ Respectively, the “OK hand sign” emoji (👌) turned out to represent the symbol for the defendant’s gang, the “fire” emoji (🔥) signified that the drugs were of high quality, and the “full moon with face” emoji (🌕) prompted investors to keep or invest in stock.²⁹⁷ To ensure that courts are aware of the environmental context, lawyers require the perspective interpretations of these unique emojis in their given social groups, in addition to having expertise in relevant areas of law or crime, which many do not.²⁹⁸ When the true intention of the sender is unclear, the court must acknowledge the surrounding facts and circumstances—the environmental context—to carefully interpret a given emoji.²⁹⁹

With emojis being a relatively new form of nonverbal communication, an expert familiar in the specific criminal area or social group central to the

291. *Id.* at 1251-52.

292. Qiyu et al., *supra* note 1 (describing environmental context).

293. *People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691, at *19; *Johnson v. State*, 225 A.3d 769, 774 (Md. Ct. Spec. App. 2020); *In re Bed Bath & Beyond Corp. Sec. Litig.*, No. 1:22-cv-2541, 2023 U.S. Dist. LEXIS 129613, at *16 (D.D.C. July 27, 2023).

294. *Cf. People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691, at *19; *Johnson*, 225 A.3d at 774.

295. *Emojis and the Law*, *supra* note 70, at 1246; *see generally People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691 (Ct. App. Mar. 12, 2019).

296. King, *supra* note 10101.

297. *People v. Smith*, No. B284766, 2019 Cal. App. Unpub. LEXIS 1691, *19 (Ct. App. Mar. 12, 2019); *Johnson*, 225 A.3d at 774.

298. King, *supra* note 101

299. *Id.*

case should be brought in to provide, establish, and verify the environmental context to prevent emoji misinterpretation.³⁰⁰ An expert witness's specialized knowledge can prove to be invaluable to the outcome of the case.³⁰¹ For example, in *People v. Jameson*, the court relied on testimony from an expert witness, a law enforcement officer who was knowledgeable in human trafficking, to resolve the ambiguity of the emojis.³⁰² The expert determined that the "crown" emoji (👑) represented the pimp as king, and the "high-heeled shoe" emoji (👠) used in conjunction with the "money bag" emoji (💰) meant for the prostitute to come to work.³⁰³ Without the expert witness's testimony, the court could have accepted the defendant's (false) argument that he was trying to establish a romantic relationship.³⁰⁴ Nevertheless, the expert witness helped the court reach an appropriate conclusion by offering his knowledge in that specific area of crime.³⁰⁵ Thus, expert testimony provides a valuable role in emoji interpretation as courts seek to decipher the ambiguity of emojis offered as evidence.³⁰⁶

V. CONCLUSION

The 21st century marked the beginning of the Digital Age, where technology revolutionized how the world communicates and has given rise to new forms of expression, such as emoticons, emojis, and Animoji.³⁰⁷ These new forms of communication allow individuals to add nuances and expressions to their messages in ways previously impossible.³⁰⁸ However, the rise of emojis as a form of nonverbal communication and their ambiguous nature presents a significant challenge to the courts needing to interpret them.³⁰⁹ As the number of emojis continues to increase, their meanings are bound to continue changing and adapting to new social media platforms, generations, and communities.³¹⁰ This emphasizes the need for guidelines to help courts navigate emoji interpretation.³¹¹

300. *What's New with Emoji Law*, *supra* note 6.

301. King, *supra* note 101

302. *Id.*

303. *People v. Jamerson*, No. A153218, 2019 Cal. App. Unpub. LEXIS 940, at *6 (Cal. Ct. App. Feb. 6, 2019).

304. *Id.*

305. King, *supra* note 101

306. *Id.*

307. Prisco, *supra* note 34; Rega, *supra* note 61.

308. Evans, *supra* note 3.

309. *See Verga*, *supra* note 66; *See Lee*, *supra* note 9.

310. Pardes, *supra* note 40.

311. *See generally Kelly*, *supra* note 21 (discussing the lack of court guidelines for emoji interpretation).

Overall, it is important for the legal system to evolve alongside technology to ensure that justice is fairly, accurately, and impartially served.³¹² Failure to do so would be a disservice to the law and would ignore a crucial piece of evidence in certain cases.³¹³ To combat inaccurate interpretations of an individual's intended message, attorneys and judges should pay attention to how a variety of factors, including an emoji's visual representation, societal context, cultural context, and environmental context, can assist them with emoji interpretation.³¹⁴ Further, to accurately interpret emojis and reach well-informed decisions, courts ought to acknowledge the impact that visual representations and context have on the meaning of an emoji.³¹⁵

Ultimately, courts should establish guidelines to facilitate consistent and clear interpretations of emojis.³¹⁶ First, simply showing the emoji in court can clarify cross-platform discrepancies and prevent misunderstandings that may arise from reading a verbal description of an emoji.³¹⁷ An emoji's meanings can be heavily influenced by its visual depiction, and reading a verbal description may not be sufficient for courts to properly interpret emojis.³¹⁸ Second, courts should recognize that societal, cultural, and environmental contexts impact the meaning of emojis.³¹⁹ Just like language, the meaning of an emoji can evolve over time and grow with a generation, culture, or environment.³²⁰ While emojis have specific meanings attached to them, they are also adaptable and reflect the dynamic needs of their users.³²¹ Emojis are often used to reflect tone, emotion, and expression in digital communication.³²² They can take on completely different meanings in situations where traditional forms of nonverbal communication, such as tone of voice and facial expressions, are absent.³²³ In the interest of fair play and justice, and to avoid confusion or clarify otherwise actionable statements, courts must pay attention to the impact that each of these factors have on emojis.³²⁴

312. *Id.*

313. *See id.* (explaining the influx of emojis in cases and the need for court guidelines).

314. Suci, *supra* note 57 (discussing societal context); Cotton, *supra* note 175 (discussing cultural context).

315. Harrison, *supra* note 88.

316. *See* Kelly, *supra* note 21 (describing the lack of guidelines for American courts).

317. *Emojis and the Law*, *supra* note 70, at 1257.

318. Parise, *supra* note 88, at 68.

319. Suci, *supra* note 57 (discussing societal context); Cotton, *supra* note 175 (discussing cultural context).

320. Suci, *supra* note 57.

321. *Id.*

322. *Id.*

323. *Id.*

324. Parise, *supra* note 88 at 68; Harrison, *supra* note 88.