



FALL 2022 E-NEWSLETTER

At Digital Mountain, we assist our clients with their electronic discovery, digital forensics, cybersecurity, and data analytics needs. For this E-Newsletter, we discuss emoji search, spooky case law and unveiling masked social media users based on emoji patterns. Trick or tweet just in time for Halloween!

Weird Things Happening with Emojis in Courts

There was a time, not that long ago, when court pleadings evidenced reluctance on the part of the judges to acknowledge emojis as language equivalents. As if emojis were ghostly, unidentifiable images, justices would either leave out references to pictographs or write a description of the image in a parenthetical clause within quoted evidence. In 2015, the Supreme Court granted Certiorari to hear *ELONIS v. UNITED STATES* (No. 13–983. Argued December 1, 2014—Decided June 1, 2015) without Justice Roberts explicitly using the word “emoji” or “pictograph” in his Opinion for the Court when quoting Elonis’ Facebook posts which contained emojis. Now, however, courts are not only acknowledging the importance of emojis as communication, but they’re also facing the reality that there are still some unexplored issues that may just be a little out of the norm.



When it comes to copyright protection, most people are familiar with the © symbol. However, in a pending Utah case, the question of copyright protection in a social media post takes the form of a camera emoji. In *GAREAUX v. ARONIK LLC* (Case No. 2:21-cv-00529-DBB., Dist. Court, D. Utah 2021), Plaintiff Gareaux is seeking damages resulting from an Aronik employee’s post of a Gareaux photograph without appropriate copyright information. The employee posted the photograph to Instagram with a camera emoji and a tag of Gareaux’s personal Instagram account. The court is tasked with determining whether the camera emoji in conjunction with the tag was a sufficient substitution for wording that acknowledges photo ownership. If the court sides with the Plaintiff, this case could have a spooky influence on citations of Intellectual Property pleadings in the future.

Haunting a recent plaintiff is the decision to falsify evidence, including emojis, that appeared to have time traveled. In *ROSSBACH v. MONTEFIORE MEDICAL CENTER et al.* (No. 19 Civ. 5758 (DLC), So. Dist. NY 2021), the plaintiff submitted evidence of texts containing emojis that purported to prove she was being sexually harassed by a supervisor. A careful and thorough forensic examination resulted in some shocking and disqualifying results that proved the evidence

submitted by the plaintiff was fabricated. Among the discoveries made by digital forensics examiners was that the emojis included in the text messages were not available at the time the texts were reportedly received by the plaintiff. In fact, by comparing images of how the specific emoji evolved, the emojis were determined to be at least two years older than claimed. Numerous other details were shown to be inconsistent with the plaintiff's claim, and ultimately, a dismissal with prejudice and monetary sanctions for misconduct against the plaintiff and her counsel totaling more than \$157,000 was awarded to the defendant. This ruling is likely to ward off any similar temptations to trick the courts with falsified emojis.

As courts deal with the weird things that float in with the increasing use of emojis, we can be assured of several things. Emojis are increasingly part of our daily communications, and the courts are coming to accept that. As our emoji use increases, so will their appearance in evidence, pleadings, and opinions. Finally, superior forensic practitioners will stay abreast of the technology, create new tools, and bust any emoji ghosts that mysteriously appear.

Please direct questions and inquiries about electronic discovery, digital forensics, cybersecurity, and data analytics to info@digitalmountain.com.

UPCOMING INDUSTRY EVENTS

RELATIVITY FEST

Chicago, IL: October 26-28, 2022

SEDONA CONFERENCE WG1 ANNUAL MEETING 2022

Philadelphia, PA: October 27-28, 2022

IOT WORLD 2022

Austin, TX: November 2-3, 2022

SEDONA CONFERENCE WORKING GROUP 11 MIDYEAR MEETING 2022

Cleveland, OH: November 2-3, 2022

THE MASTER'S CONFERENCE

Atlanta, GA: November 3, 2022

[Click here to see more upcoming events and links.](#)



Digital Mountain, Inc. Founder and CEO, Julie Lewis, will be presenting at various upcoming industry events. Please send requests for speaker or panel participation for her to marketing@digitalmountain.com.

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