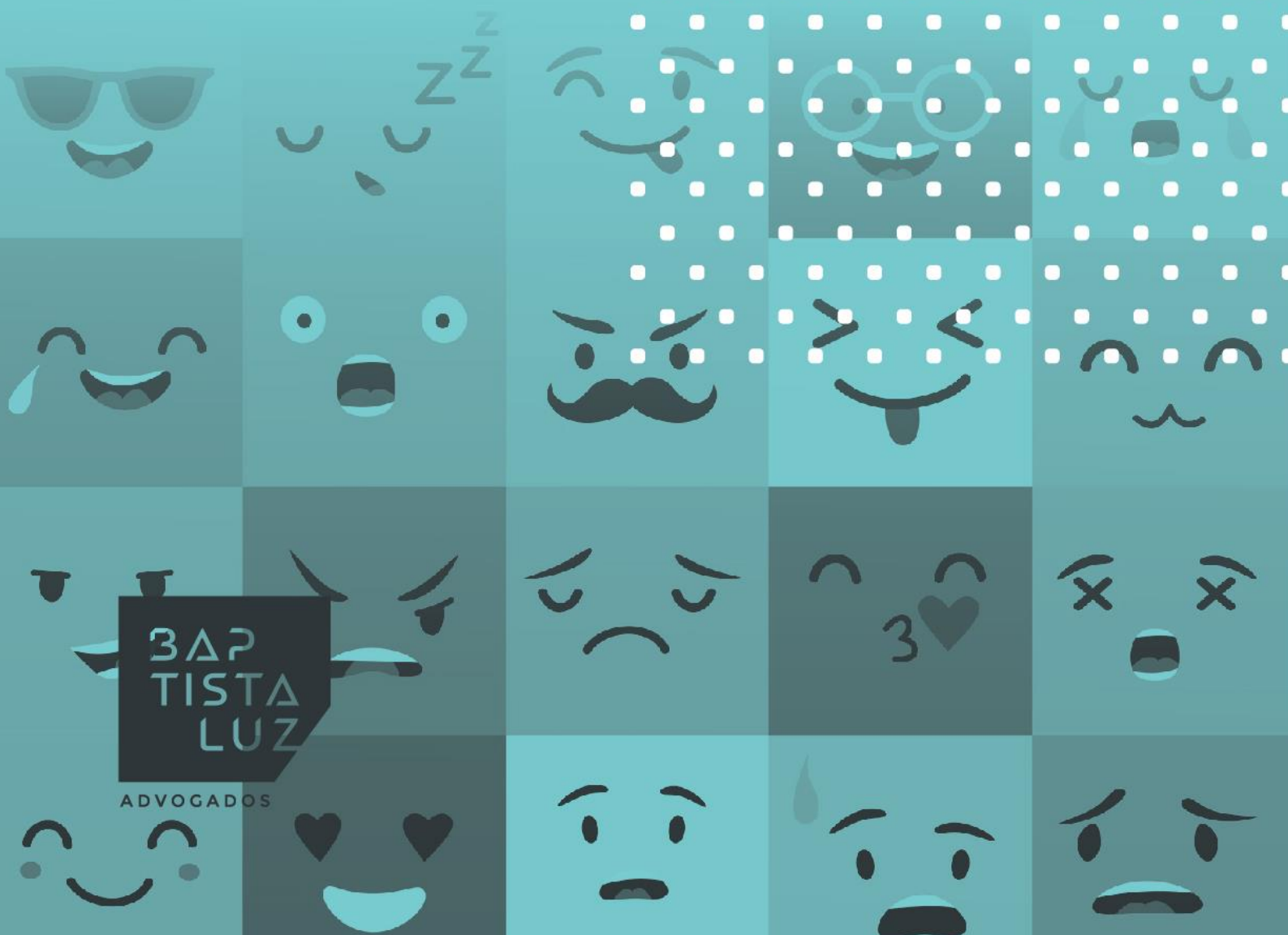


# INTELLECTUAL PROPERTY OF EMOJIS



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## **A STUDY ON THE INTELLECTUAL PROPERTY OF EMOJIS**

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*Emojis*<sup>1</sup>, pictographs usually depicted as colorful cartoons, are an extremely popular worldwide form of expression and communication used in online conversations, social networks and emails. There is even an [emojipedia](#) for explaining the different meanings of each *emoji*.

They became available in 1999, on Japanese cellphones, hence the origin of the word, which in Japanese means<sup>2</sup>:

絵 (e ≅ figure) 文 (mo ≅ written) 字 (ji ≅ character)

In 2007, *Apple* launched its first *iPhone*, and just like *Google*, they realized that they needed to become more competitive in the Japanese market. Soon afterwards, both companies were providing *emojis* in their devices, which were initially restricted in the Japanese market. However, they would soon be discovered by American users fascinated by the technology<sup>3</sup>.

Since then, the use of *emojis* has grown exponentially in the whole world. So much that in 2015 the 😂<sup>4</sup> was elected as the word of the year by the Oxford dictionaries<sup>5</sup>.

<sup>1</sup> In Japanese, the plural of *emoji* is *emojī*.

<sup>2</sup> Available at: [http://unicode.org/reports/tr51/#Design\\_Guidelines](http://unicode.org/reports/tr51/#Design_Guidelines), accessed on 02/09/2017.

<sup>3</sup> Available at: <http://nymag.com/daily/intelligencer/2014/11/emojis-rapid-evolution.html>, accessed on 02/09/2017.

<sup>4</sup> *Emoji* made available for free by [EmojiOne](#)

<sup>5</sup> View at: <http://blog.oxforddictionaries.com/2015/11/word-of-the-year-2015-emoji/>, accessed on 02/07/2017



Under these conditions, it would not be long before publicity agencies would see the use of the *emoji* as a new way to communicate with younger generations. Consequently, many companies tend to think that because these images are everywhere, their use is free, which is not true. Because they entail authorship<sup>6</sup> and a code<sup>7</sup>, copyright law protects *emoji*.

### HOW TO USE EMOJIS FOR PRODUCTS AND PUBLICITY

Since 1989<sup>8</sup>, projects in the United States have been underway to standardize codes used over the internet. In 1991, the unification of these ideas originated the *Unicode Consortium*, a non-profit organization whose members are large technology companies, countries, universities, among others<sup>9</sup>.

When companies such as *Apple* and *Google* included *emojis* in their operational systems, they became part of the *Unicode Standard*.

This standard allows the code [U+1F60E](#) or 😊<sup>10</sup>, for example, to be interpreted the same way by different operational systems. Nevertheless, the drawing of the *emoji*, despite being based on the same black and white symbol of *Unicode*, is the authorship of each brand that created it.

Therefore, the *emoji* code is property of Unicode and the colored drawing is property of the operational system or platform that makes it available<sup>11</sup>. This means that when an advertising agency or a clothing company, for example, decides to reproduce, edit, adapt or use an *emoji* in its advertising

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<sup>6</sup> Brazil Law No. 9.610: Art 7. The intellectual works that are protected are creations of the mind, whatever their mode of expression or the medium, tangible or intangible, known or susceptible of invention in the future, in which they are fixed, such as:

(...)

IX - illustrations, geographic maps and other works of the same kind;

<sup>7</sup> Brazil Law No. 9.609/1998: Art 2. The protection system for intellectual property of software is the same granted to literary works by the copyright laws and connected provisions in Brazil, under the terms of this Law.

<sup>8</sup> More information:

<http://www.nytimes.com/1991/02/20/business/universal-computer-code-due.html>, accessed on 02/07/2017

<http://www.unicode.org/history/versionone.html>, accessed on 02/10/2017

<sup>9</sup> See: <http://www.unicode.org/consortium/members.html>

<sup>10</sup> *Emoji* made available for free by [EmojiOne](#)

<sup>11</sup> Available at: <http://unicode.org/emoji/images.html>, accessed on 02/14/2017



campaigns or prints, they must search for available licenses<sup>12</sup> (if any) or ask for authorization<sup>13</sup> from the brand that created the colored design.

There is yet another option for companies or people interested in using representations of *emojis* for other purposes that have not yet been made available by their creators: it is possible to convey desired feelings or situations by creating your personal representations.

Thus, the brand or the individual will still be transmitting a message without infringing on copyrights. For example, the copyright law<sup>14</sup> does not protect the idea of the smiley face with dark sunglasses. However, because only images will be produced, there will be no relationship with the code supplied by Unicode.

## **HOW TO CREATE APPLICATIONS OR SOCIAL NETWORKS THAT MAKE EMOJIS AVAILABLE**

If the idea of a company, or a potential entrepreneur, is to make an *emoji* available for its platforms or operational systems, three options are seen.

The first option is to become a member of the *Unicode Consortium*. To do this as a company, it is necessary to spend between \$2,500 and \$18,000 per year<sup>15</sup>, depending on the size

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<sup>12</sup> The images and the respective compliant companies are available at: <http://unicode.org/emoji/charts/full-emoji-list.html>, accessed on 02/14/2017

<sup>13</sup> Brazil Law No. 9.610/1998: Art 29. The express prior authorization of the author of a literary, artistic or scientific work shall be required for any kind of use, such as:

I - complete or partial reproduction;

II - publication;

III - adaptation, setting to music or any other transformation;

(...)

V - incorporation in a phonogram or in an audiovisual production;

VI - distribution where it is not provided for in a contract signed by the author with third parties for the use or exploitation of the work;

VII - distribution for the purposes of offering works or productions by cable, optic fiber, satellite, electromagnetic waves or any other system enabling the user to select a work or production and receive it at the time and place of his choice, provided that the access to the works or productions is made through any system requiring payment on the part of the user;

VIII - the direct or indirect use of the literary, artistic or scientific work in one of the following forms:

(...)

j) exhibition of works of three-dimensional and figurative art;

<sup>14</sup> Brazil Law No. 9.610: Art 8. The following shall be excluded from copyright protection within the meaning of this Law:

I - ideas, normative procedures, systems, methods or mathematical projects or concepts as such;

<sup>15</sup> Available at: <http://www.unicode.org/consortium/levels.html#discount>, accessed on 02/17/2017



of the company and the interest of the organization. There are discounts for affiliations lasting more than one year.

Only the following companies, which participate in the *Unicode Consortium*, have their own *emojis* that are linked to the same code: *Apple*, *Google*, *Twitter*, *Facebook*, *Samsung*, *Windows* and *Emoji One*. This allows them all to be interpreted in the same way on all of the aforementioned operating systems and platforms.

If each company had its own code for 😎<sup>16</sup> by the beginning of 2017, we would have the following situation: a sender using *WhatsApp*<sup>17</sup> would send 😎<sup>18</sup> from their *iPhone* to a *Samsung smartphone*, but the recipient would only receive a code.

However, creating your own *emoji* is also an option. *Skype*, for instance, has its own *emojis*, that is, codes not in line with the *Unicode Standard*. This means that these *emojis* are only understood within their own platforms, unless they are copied as images and not codes, which in this case would disqualify them as *emojis*.

Finally, the company has the option of using *emojis* created by other companies<sup>19</sup>, as long as they are not tied with the *Unicode Consortium*. Some companies, like *Apple*, do not make their licensing terms publicly available, for that reason, it would be more prudent to contact them directly before misusing any of their *emojis*.

Unlike *Apple*, other companies such as *Emojidex*, *Twitter* and *Google* make their terms of licensing available for their *emoji*. In the same way, *Emoji One* makes their *emojis* available for free use by means of a *Creative Commons*<sup>20</sup> license. These *emojis* can be used freely in digital form, in print form, or even, as an

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<sup>16</sup> *Emoji* made available for free by [EmojiOne](#)

<sup>17</sup> Announcement available at: [WhatsApp adopts all the iPhone emojis for the Android](#), accessed on 02/17/2017.

<sup>18</sup> *Emoji* made available for free by [EmojiOne](#)

<sup>19</sup> Available at: <http://blog.emojipedia.org/who-owns-emoji/>, accessed on 02/21/2017.

<sup>20</sup> For more details on this license access: <http://emojione.com/licensing/>

To find out more about *Creative Commons* access: <https://br.creativecommons.org/>



image for commercial ends as discussed in the previous topic, provided that the organization is given its due credit, as it was in this article.

## **CONCLUSION**

People are increasingly using *emojis* to express themselves, which makes them attractive to publicity agencies and for the development of new products or services.

As we have demonstrated in this article, it is legally possible to use *emojis* for commercial ends, as long as copyright is respected.