

tumblr.

**Copyright and Trademark
Transparency Report**

July — December 2015

Introduction

Here it is, our second copyright and trademark transparency report. As with the previous edition, it covers the number and nature of takedown requests (based on copyright and trademark infringement) we received over the past six months, from July through December of 2015.

Intellectual property rights are a tricky matter, and disputes around them are nearly always handled through existing federal laws.

Accordingly, we'll take you step-by-step through a DMCA takedown on Tumblr in an effort to clarify the sometimes-foggy process. We want you to come away from this report not just with a head full of numbers, but also a better understanding of why and how this type of content gets removed—or doesn't—from Tumblr.

Enjoy.

How we handle copyright infringement notifications under the Digital Millennium Copyright Act (DMCA)



A copyright holder, or their authorized representative, finds content on Tumblr that they believe violates their copyright.



The copyright holder or authorized representative sends Tumblr a DMCA notice.



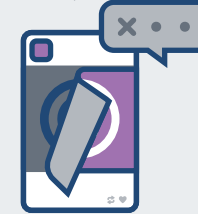
Tumblr reviews the DMCA notice to determine if it is valid.



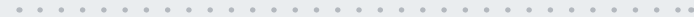
INVALID

Tumblr determines the request is invalid and notifies the complainant.

VALID



Tumblr processes the notice, removes the specified content, and notifies the user who posted the content. The user may receive a strike against their account. After three valid strikes, their account is terminated.



IF...

the user thinks that the content was removed in error, or can present a legal argument for why the content should remain up, they may file a counter-notice. Instructions for filing a counter-notice are sent to the user in the content removal email.

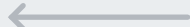


COUNTER NOTICE FILED



Tumblr determines if the counter-notice is valid.

VALID



Tumblr sends the information from the counter-notice to the original complainant.



After 10 days, the removed content is restored, and the strike is removed from the user's account.

— BUT —

The user is now liable for the content they've posted. If the original complainant wishes to pursue recourse, they may sue the user for copyright infringement.

INVALID

Tumblr notifies the user that their counter-notice is invalid. The deleted content is not restored, and the strike remains on the user's account.

Overview of all DMCA notices received, July to December 2015

From July to December 2015, we received 12,434 DMCA notices and determined that 83% (10,315) were valid.¹ In response to valid notices, Tumblr:

- Removed 98,921 pieces of content
- Removed 59,766 posts (0.00005% of posts on Tumblr)
- Terminated 2,156 accounts in accordance with our policy against repeat copyright infringement

Looking at copyright notices by content type (tracking with Tumblr's post types):

Images: 87,353 items (88%)	Links: 229 items (< 1%)
Audio: 5,464 items (6%)	Asks: 103 items (< 1%)
Video: 2,816 items (3%)	Quotes: 74 items (< 1%)
Text: 1,813 items (2%)	Chats: 5 (< 1%)

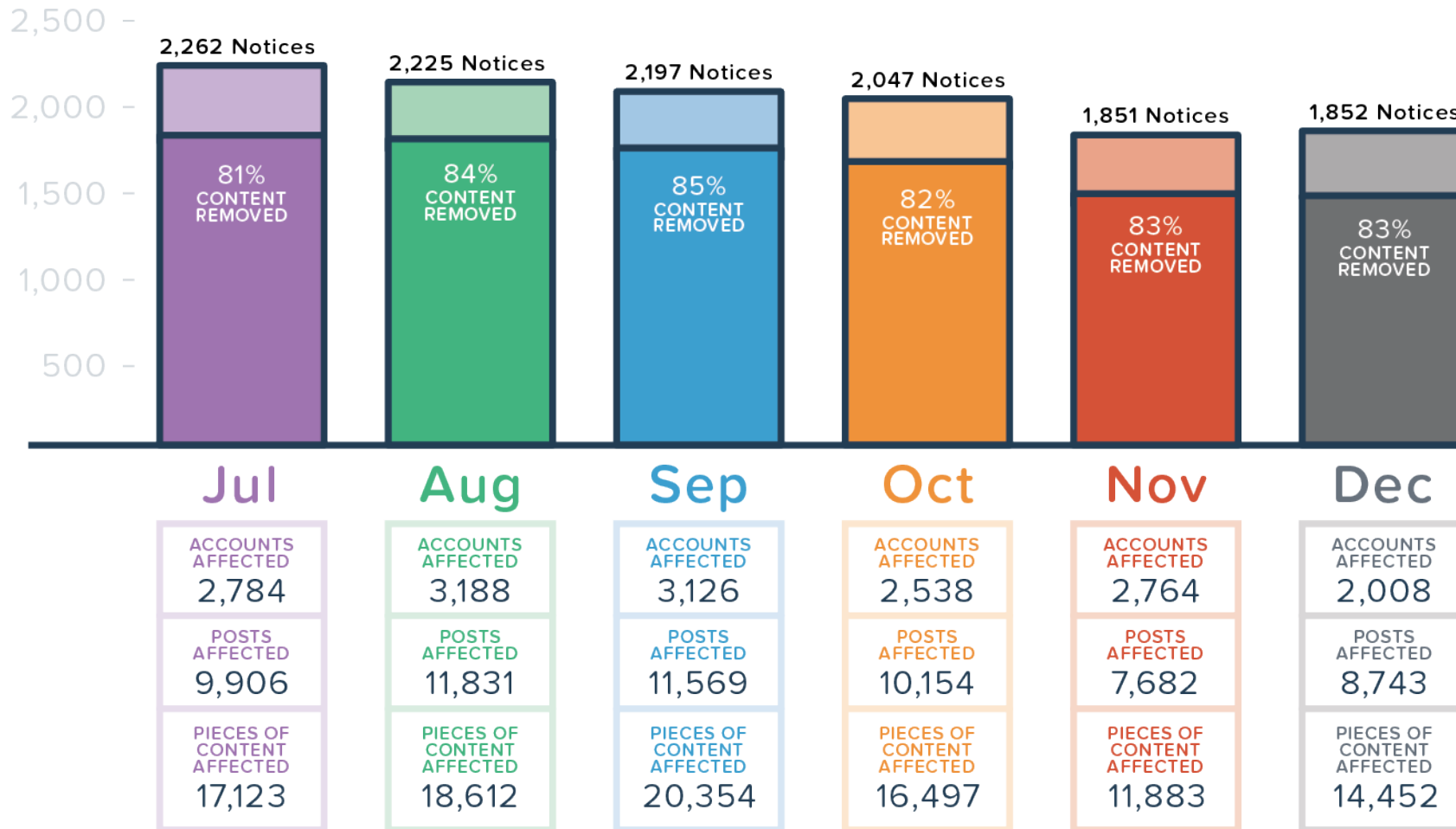
Additionally, 1,065 notices referred to either static blog pages or blog URLs (rather than post permalinks). In the latter case, the notice was ignored.

As a U.S. company, Tumblr requires that all copyright notices be submitted in accordance with the DMCA. When we receive non-compliant requests (including foreign requests), we ask the complainant to resubmit their request in accordance with the statute.

1. Tumblr processes notices pursuant to the DMCA. Under the DMCA there are a number of conditions a complaining party must satisfy:

- *Identification of the work or material being infringed.*
- *Identification of the material that is claimed to be infringing, including its location, with sufficient detail so that we are capable of finding it and verifying its existence.*
- *Contact information for the notifying party, including name, address, telephone number, and email address.*
- *A statement made under penalty of perjury that the information provided in the notice is accurate and that the complainant is authorized to make the complaint on behalf of the copyright owner.*
- *A statement that the complainant has a good faith belief that the material is not authorized by the copyright owner, its agent, or law.*
- *The complainant's physical or electronic signature.*

Overview of all DMCA notices received, July to December 2015



Overview of all DMCA counter-notices received, January to June 2015

From July to December 2015, we received a total of 60 counter-notices from users requesting the restoration of content that had been removed pursuant to a DMCA takedown notice. Of those 60, 28 were deemed valid² (47%). This affected a total of 28 accounts, and resulted in the restoration of 44 posts containing 91 pieces of media. Of the 59,766 posts that were removed pursuant to a takedown notice, 0.07% were restored using the counter-notice process.

2. In accordance with the statute, a valid counter-notice must contain:

- The user's physical or electronic signature
- The user's name, address, and phone number
- Identification of the material and its location before it was removed
- A statement under penalty of perjury that the material was removed by mistake or misidentification
- The user's consent to the jurisdiction of a federal court in the district where the user lives (or the federal district court located in New York County, New York, if the user lives outside of the U.S.)
- The user's consent to accept service of process from the party who submitted the takedown notice

In addition to the statutory requirements, we sometimes ask for the legal or factual basis for filing the counter-notification

	# of Counter Notices	% Valid	# Accounts Affected with Restored Content	# of Posts Restored	# of Pieces of Content Restored
July	10	60%	6	6	7
Aug	11	46%	5	15	37
Sep	18	33%	6	8	26
Oct	11	64%	7	10	11
Nov	1	0%	0	0	0
Dec	9	44%	4	5	10
TOTAL	60	47%	28	44	91

Overview of all trademark complaints received, July to December 2015

Handling trademark issues (either potential infringement or instances of confusion) is complex, especially for neutral platforms like Tumblr, and consequently requires additional analysis as compared to copyright infringement. We first require documentation of a live federal or international trademark registration—often the name of a business or its logo.³ We then look at a variety of factors to determine if reported content or a URL is misleading to users or causes confusion, and what action to take in these cases. Among them:

- How the reported term is being used
- Content found on the blog
- The registered goods and services
- Landscape of similar marks related to the reported term
- When the reported term was first used

3. In rare cases we make exceptions to this requirement, such as when a name or phrase is exceptionally distinctive or famous.

Month	# of Requests	# of URLs Affected	% Blog Content Removed	% URLs Changed
Jul	47	55	9%	72%
Aug	45	48	0%	58%
Sep	54	71	2%	78%
Oct	38	55	3%	66%
Nov	31	36	3%	55%
Dec	22	24	0%	64%
TOTAL	237	289	3%	67%

Overview of all trademark complaints received, July to December 2015

Based on our findings, we may prescribe one or more of the following actions:

- If a user is using a misleading URL, we may require them to change it. We notify the URL holder and give them an opportunity to change the URL on their own before we change the URL to something generic on their behalf.
- Alternatively, we may request that a user include a disclaimer on their blog, should we determine that a disclaimer would alleviate confusion.
- Sometimes, we remove specific posts that are using a term to create confusion. Like all content takedowns on the site, we always notify the user when we remove any of their content, and include as much information as possible regarding the claim made against their post.

From July to December 2015, we received a total of 237 trademark complaints relating to 289 accounts on Tumblr. Among those 237 complaints, only 3% of them led to the removal of content, while 67% of them led to the modification of blog URLs.

As you can see, the majority of trademark complaints that we receive are related to a blog URL that a complainant believes is causing confusion.

Possible Emerging Trends

In the course of comparing our numbers from this period, July to December 2015, to those from previous periods, we noticed the following trends:

- The overall number of DMCA takedowns issued was down nearly 10%, the amount of content that was removed dropped by over 20%, and the number of blogs that were terminated fell by over 30%.
- We received fewer than half the number of DMCA takedowns for audio content—with the number of requests dropping from 13,868 to 5,464.
- Video posts, conversely, received over twice the number of takedown requests—rising to 2,816 from 1,279.
- The number of counter-noticed deemed valid jumped from 14 to 28—a 100% increase.
- Trademark complaints held relatively steady, as did the percentage of trademark disputes resolved through URL alterations rather than content removal.

The sample size is small, and these conclusions should be assessed accordingly. Regardless, the shifts highlighted here seemed compelling enough to share, and we encourage any mathletes among you to exercise the numbers as you see fit.

With that, we come to the end of our second-ever copyright and trademark transparency report. Hopefully it's offered some perspective on the size, scope, and texture of intellectual property disputes on Tumblr (or, at very least, given you a pretty flowchart to print out and put on your wall). We look forward to reconvening six months from now, when we'll have updates on requests made throughout the first half of 2016.