

**tumblr.**

**Copyright and Trademark  
Transparency Report**

July — Dec 2016

## Introduction

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Welcome to the fourth edition of Tumblr’s copyright and trademark transparency report, covering the number and nature of takedown requests we received over the past six months, from July through December of 2016.

Copyright disputes are complex affairs, so once again we’ll take some time to guide you, step-by-step, through the mechanics of a Digital Millennium Copyright Act takedown order. We made a flowchart and everything.

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.

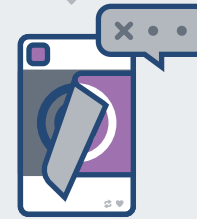


Tumblr reviews the DMCA notice to determine if it is valid.

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.

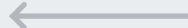


COUNTER NOTICE FILED



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, January to June 2016

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From July to December 2016, we received 10,762 DMCA notices and determined that 84% (9,006) were valid. In response to valid notices, Tumblr:

- Removed 77,108 pieces of content
- Removed 49,299 posts (0.0003% of posts on Tumblr)
- Terminated 1,503 accounts in accordance with our policy against repeat copyright infringement

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

**Images:** 67,618 items (88%)

**Text:** 567 items (<1%)

**Audio:** 4,900 items (6%)

**Video:** 2,878 items (6%)

**Links:** 266 items (< 1%)

**Asks:** 44 items (< 1%)

**Quotes:** 10 items (< 1%)

**Chats:** 1 items (< 1%)

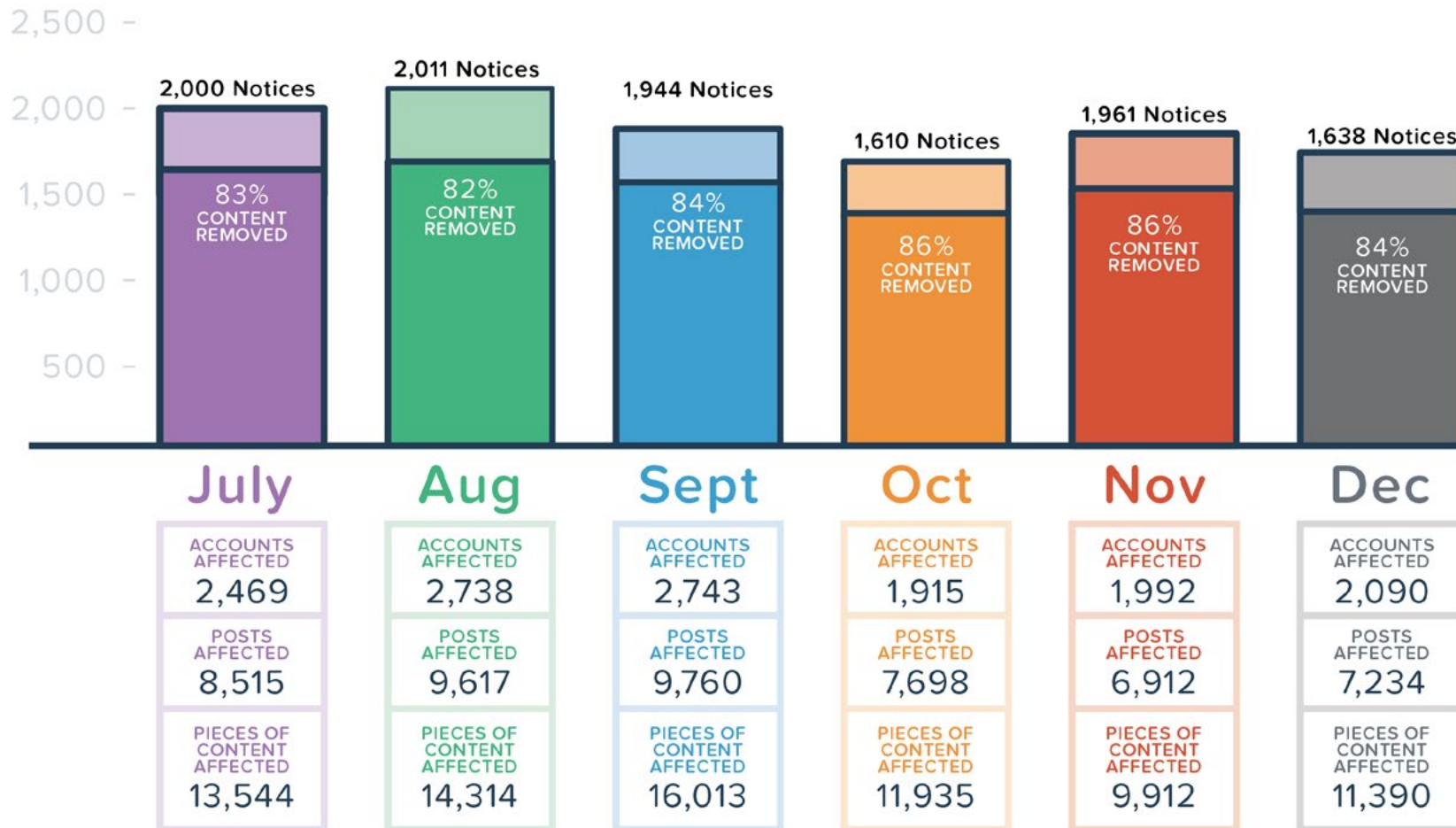
Additionally, 824 notices referred to either static blog pages or blog URLs (rather than post permalinks). In the latter case, the notice was ignored.

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.

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

1. Identification of the work or material being infringed.
2. 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.
3. Contact information for the notifying party, including name, address, telephone number, and email address.
4. 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.
5. A statement that the complainant has a good faith belief that the material is not authorized by the copyright owner, its agent or law.
6. The complainant's physical or electronic signature.

## Overview of all DMCA notices received, January to June 2016



## Overview of all DMCA counter-notices received, July to December 2016

From July to December 2016, we received a total of 120 counter-notices from users requesting the restoration of content that had been removed pursuant to a DMCA takedown notice. Of those 120 counter-notices, 101 were deemed valid (93%). This affected a total of 112 accounts, and resulted in the restoration of 198 posts containing 340 pieces of media. Of the 49,299 posts that were removed pursuant to a takedown notice, 0.4% were restored using the counter-notice process.

<sup>2</sup> 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	90%	9	13	20
Aug	17	82%	14	19	30
Sept	28	86%	24	32	55
Oct	12	100%	12	15	21
Nov	30	100%	30	64	116
Dec	23	100%	23	55	98
<b>TOTAL</b>	<b>120</b>	<b>93%</b>	<b>112</b>	<b>198</b>	<b>340</b>

## Overview of all trademark complaints received, July to December 2016

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. 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

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

	# of Requests	# of URLs Affected	% Blog Content Removed	% URLs Changed
July	32	34	6%	78%
Aug	16	16	0%	69%
Sept	19	20	5%	89%
Oct	14	15	7%	57%
Nov	14	18	7%	50%
Dec	9	9	0%	22%
TOTAL	104	112	5%	67%

## Overview of all trademark complaints received, July to December 2016

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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 2016, we received a total of 104 trademark complaints relating to 112 accounts on Tumblr. Among those 104 complaints, only 5% 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

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In the course of comparing our numbers from this period, July to December 2016, to those from previous periods, we noticed the following trends:

- We received slightly fewer DMCA takedown notices over this period, however the percentage that were valid remained relatively steady.
- DMCA takedowns for audio content remained steady this reporting period, after we saw a decline over the past two previous reports.
- The post type with the largest drop in DMCA takedowns was text posts, for which we received 4,515 in the previous reporting period, but only 567 in this reporting period.
- We saw a significant increase in the percentage of valid counter notices that we received over this period, from 38% in the previous reporting period to 93% this reporting period.

We've now come to the end of our fourth copyright and trademark transparency report. If you enjoyed it, we encourage you to explore our archives and dive as deeply into these numbers as you like.