

tumblr.

**Copyright and Trademark
Transparency Report**

July — Dec 2017

Introduction

Welcome to the sixth edition of Tumblr’s copyright and trademark transparency report, covering the number and nature of takedown requests we received from July through December of 2017.

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.

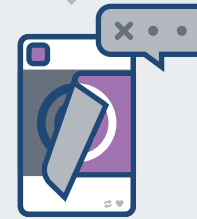


Tumblr reviews the DMCA notice to determine if it is valid.

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.

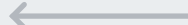


COUNTER NOTICE FILED



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, July to December 2017

From July to December 2017, we received 9,216 DMCA notices and determined that 86.9% (8,006) were valid.¹ In response to valid notices, Tumblr:

- Removed 59,600 pieces of content
- Removed 39,303 posts (0.000008% of posts on Tumblr)
- Terminated 2,292 accounts in accordance with our policy against repeat copyright infringement

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

Images: 51,403 items (88%)

Text: 1,658 items (3%)

Audio: 1,496 items (3%)

Video: 3,366 items (6%)

Links: 137 items (< 1%)

Asks: 43 items (< 1%)

Quotes: 67 items (< 1%)

Chats: 3 items (< 1%)

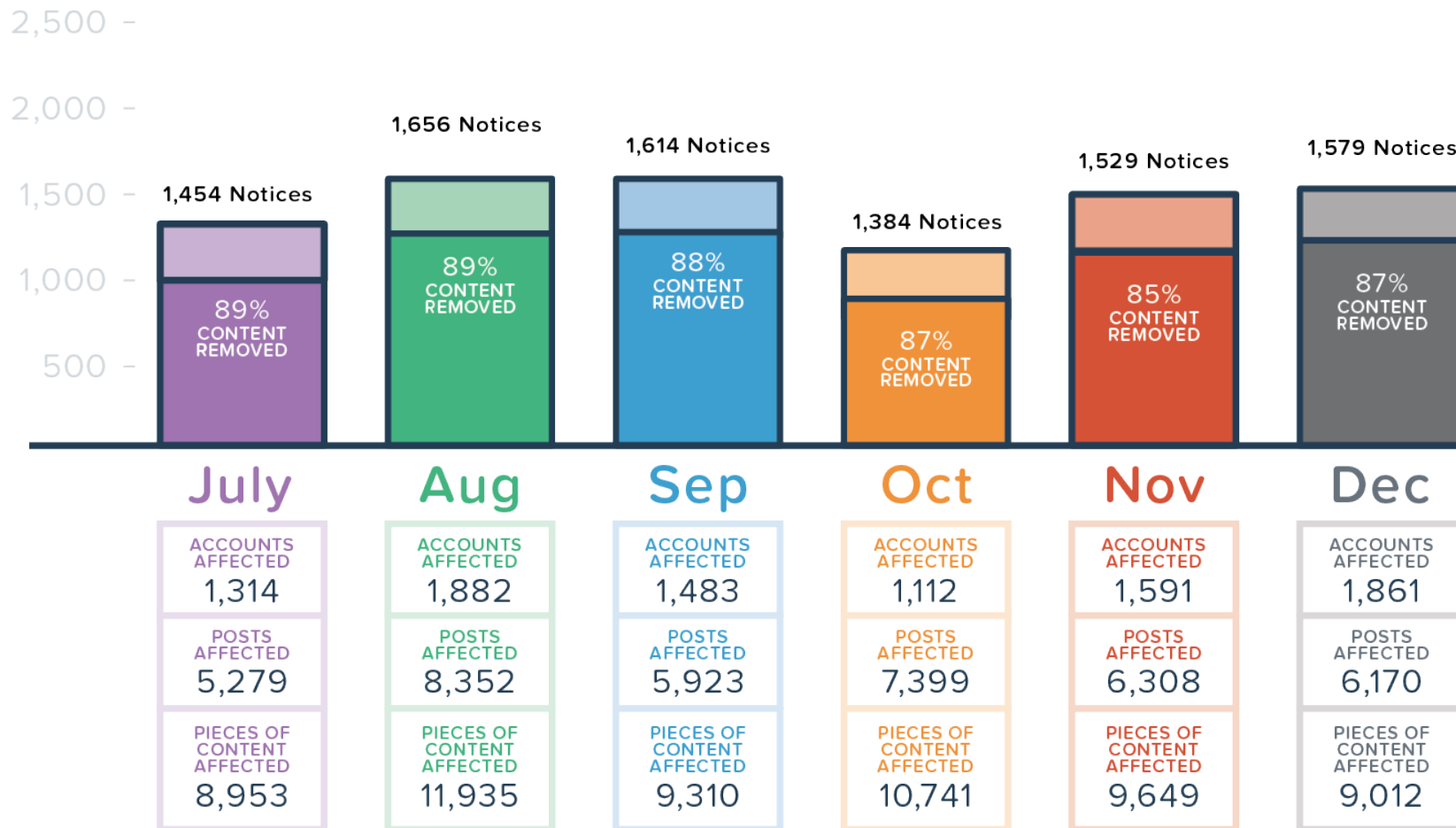
Additionally, 403 notices referred to either static blog pages or blog URLs (rather than post permalinks). In the latter case, the notice was ignored.

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:

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, July to December 2017



Overview of all DMCA counter-notices received, July to December 2017

From July to December 2017, we received a total of 50 counter-notices from users requesting the restoration of content that had been removed pursuant to a DMCA takedown notice. Of those 50 counter-notices, 48 were deemed valid² (96%). This affected a total of 54 accounts and resulted in the restoration of 279 posts. Of the 39,303 posts that were removed pursuant to a takedown notice, 0.71% 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	26	100%	12	69	120
Aug	8	88%	7	49	63
Sep	6	100%	4	36	47
Oct	0	100%	0	0	0
Nov	3	100%	2	7	7
Dec	7	86%	6	108	129
TOTAL	50	96%	31	269	366

Overview of all trademark complaints received, July to December 2017

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 brand 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.



July	12	11	9%	45%
Aug	6	6	0%	50%
Sep	7	7	0%	57%
Oct	4	3	0%	33%
Nov	12	15	6%	26%
Dec	6	6	0%	33%
TOTAL	47	48	4%	43%

Overview of all trademark complaints received, July to December 2017

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.
- 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 2017, we received a total of 47 trademark complaints relating to 48 accounts on Tumblr. Among those 47 complaints, only two of them led to the removal of content and 43% of them led to the modification of blog URLs.

Possible Emerging Trends

In the course of comparing our numbers from this period (July to December 2017) 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 continue to decrease.
- DMCA takedowns for text content have also decreased from 2,564 in the last reporting period to 1,658 in this reporting period.
- The number of accounts terminated in accordance with our policy against repeat copyright infringement increased in this reporting period.
- We have seen a decrease in the number of trademark complaints over the past two reporting periods.

We've now come to the end of our sixth 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.