

**tumblr.**

**Copyright and Trademark  
Transparency Report**

Jan — June 2016

## Introduction

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Here it is, our latest copyright and trademark transparency report. As in previous editions, we're covering the number and nature of takedown requests (based on copyright and trademark infringement) we received over the past six months, from January through June of 2016.

To lend some clarity to the complex matter of intellectual property rights, we're once again taking you, step-by-step, through the mechanics of a Digital Millennium Copyright Act takedown order. You'll gain a greater understanding of how disputes around copyright get resolved, and you'll have something to talk about at parties.

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.



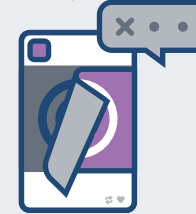
Tumblr reviews the DMCA notice to determine if it is valid.



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

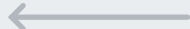


Tumblr determines if the counter-notice is valid.

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 January to June 2016, we received 12,864 DMCA notices and determined that 83% (10,686) were valid.<sup>1</sup> In response to valid notices, Tumblr:

- Removed 97,403 pieces of content
- Removed 61,053 posts (0.00004% of posts on Tumblr)
- Terminated 1,558 accounts in accordance with our policy against repeat copyright infringement

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

<b>Images:</b> 83,515 items (86%)	<b>Links:</b> 868 items (< 1%)
<b>Text:</b> 4,515 items (5%)	<b>Asks:</b> 88 items (< 1%)
<b>Audio:</b> 3,999 items (4%)	<b>Quotes:</b> 86 items (< 1%)
<b>Video:</b> 3,326 items (3%)	<b>Chats:</b> 3 (< 1%)

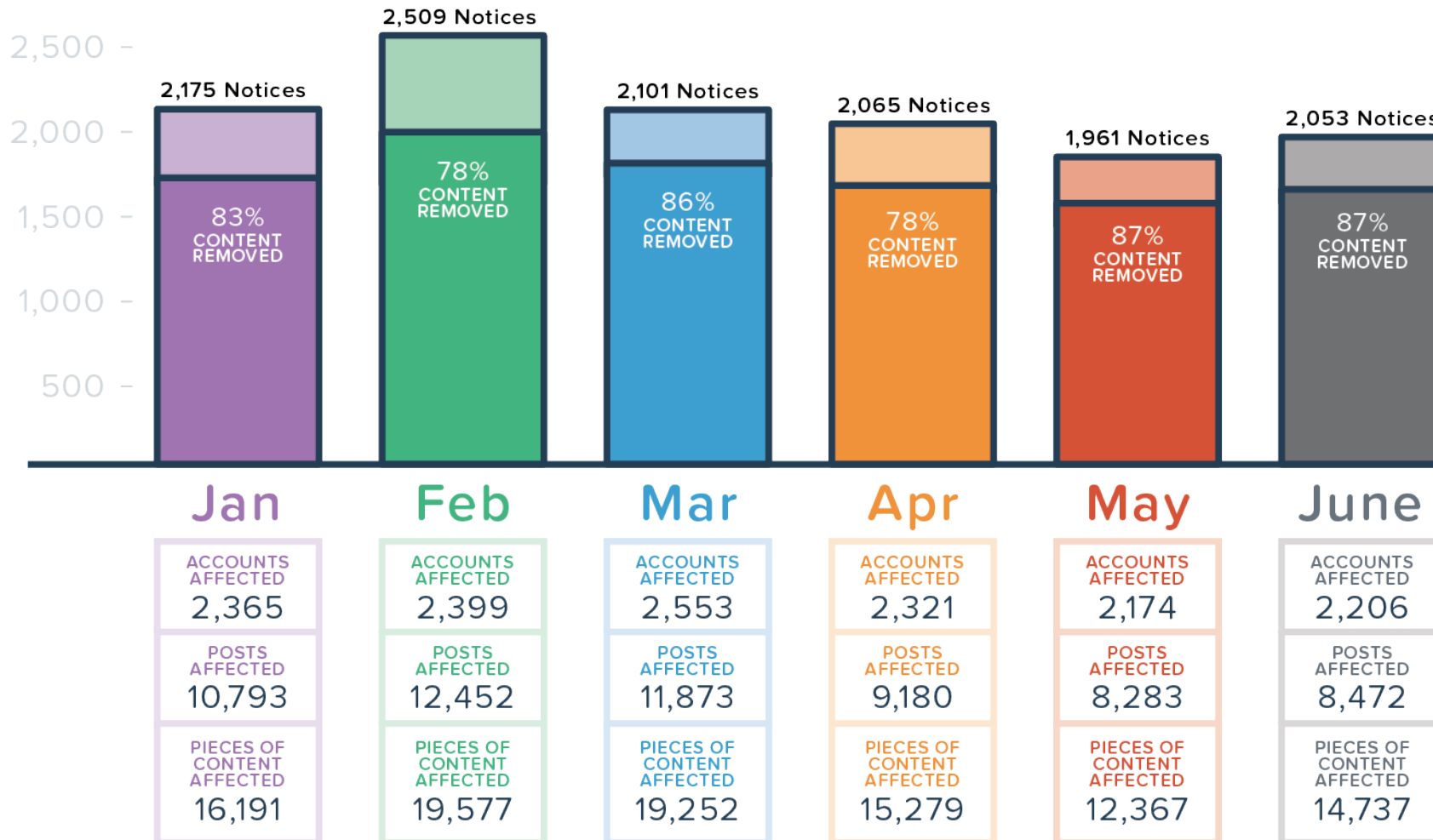
Additionally, 1,005 notices referred to either static blog pages or blog URLs (rather than post permalinks). In the latter case, the notice was ignored.

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, January to June 2016

From January to June 2016, we received a total of 85 counter-notices from users requesting the restoration of content that had been removed pursuant to a DMCA takedown notice. Of those 85, 32 were deemed valid<sup>2</sup> (38%). This affected a total of 32 accounts, and resulted in the restoration of 75 posts containing 87 pieces of media. Of the 61,053 posts that were removed pursuant to a takedown notice, 0.1% 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
Jan	14	36%	5	8	8
Feb	17	29%	5	5	5
Mar	14	29%	4	4	4
Apr	7	43%	3	5	9
May	13	46%	6	9	9
June	20	45%	9	44	52
<b>TOTAL</b>	<b>85</b>	<b>38%</b>	<b>32</b>	<b>75</b>	<b>87</b>

## Overview of all trademark complaints received, January to June 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.<sup>3</sup> 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
Jan	23	41	4%	70%
Feb	29	30	0%	79%
Mar	32	33	3%	72%
Apr	18	18	0%	72%
May	24	24	4%	54%
Jun	16	17	0%	75%
TOTAL	142	163	2%	70%

## Overview of all trademark complaints received, January to June 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 January to June 2016, we received a total of 142 trademark complaints relating to 289 accounts on Tumblr. Among those 163 complaints, only 2% of them led to the removal of content, while 70% 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, January to June 2016, to those from previous periods, we noticed the following trends:

- The number of DMCA takedowns issued was relatively steady over this period, with the number of posts removed increasing by only 2%.
- We continue to see a decline in DMCA takedowns for audio content—with the number of requests dropping from 5,464 to 3,999.
- Text posts, conversely, received over three times the number of takedown requests—rising to 4,515 from 1,813.

Beyond that, there hasn't been a lot of change in the takedown rate since last time around. But hey, if you like numbers, we encourage to dive as deeply into these numbers as you want.

And that, friend, is the end of our third copyright and trademark transparency report. We hope you've enjoyed this overview of the size, scope, and texture of intellectual property disputes on Tumblr. See you again six months from now, when we'll have updates on takedown requests made throughout the second half of 2016.