Twitter Thread by Future of Music Coalition

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@future_of_music

Much of the chatter about Twitch and Metallica and copyright is getting the facts and the history wrong. Quick thread.

The short version is that people are confusing the DMCA itself with particular companies' choices about how to implement the DMCA. That works to the benefit of huge companies like Amazon (owner of Twitch); they end up escaping scrutiny.

Jeff Bezos is worth $197 Billion. Twitch can afford to pay for music licensing! And any artist who controls their own publishing has the ability to waive their exclusive rights if they want to perform their own material and don't mind that the service isn't paying them.

If it's unclear who made the decision to swap the Metallica performance audio and why, we do know it wasn't because they were "forced" to by the DMCA.

We know that because the same performance was simultaneously streaming on other platforms with no trouble. This happened because 1) some person made a mistake 2) some automated system made a mistake or 3) Twitch failed to secure necessary licenses.

In any case, responsibility for the incident lies with Twitch. Now, here's why this matters for people who aren't megastars, musicians who aren't household names, and who rely on the internet to reach audiences AND hope to get paid fairly...

Big tech companies want musicians & music on their platforms, because musicians attract lots of users. They also want to avoid having to pay for music rights to the extent they can, because it’s an expense, and it cuts into profitability. So they have to balance concerns.

Musicians don’t have a lot of bargaining power with big platforms. A good reference to understand this is @linamkhan’s paper “sources of tech platform power” https://t.co/XiOTBcaqDb Lina’s the biggest expert there is on Amazon, it’s just 10 pages don’t be scared!

Services have to get licenses if they want to use music. They negotiate with rightsholders and sometimes with Performing Rights Organizations. (In some case they can pay for a statutory license at government-set rates. And uses that qualify as fair use don't need a license.)

But there's a downward pressure on the price that all creators get paid for music that comes from dysfunction in the way the DMCA is currently operating, which doesn't really benefit small creators or users.

Here's a whole thread unpacking that topic from last June when Congress was looking at it: https://t.co/ndEMAcDN0r

> Quick thread on what today's @senjudiciary hearing on Notice and Takedown in the DMCA is about. (1/?)
>
> — Future of Music Coalition (@future_of_music) June 2, 2020

At the same time that Congress is looking at how/whether to fix this problem (there have been good ideas floated and some terrible ones), Twitch/Amazon continue to negotiate with rightsholders.

Poorly understood, incidents like this leave twitch viewers and users and casual readers of media accounts convinced that every copyright annoyance is a result of a dumb law they don't like but don't fully understand, and probably music industry greed.

(To be clear, we think most Twitch users and most citizens generally are really smart! There's just a lot going on to obscure the real state of power relations, and especially how workers are impacted!)

There are problems with the DMCA, and big corporations do have too much power in the music industry. But Amazon alone is 20 times the size of the entire recorded music business.

When people are encouraged to direct all their ire at the DMCA (not at Amazon's failure to implement it correctly) or at the music biz, it improves Amazon's bargaining position in licensing negotiations, and imperils Congress's ability to achieve needed reforms.

That's not a good outcome for musicians and it's not a good outcome for audiences (including Twitch users, and potentially users of other innovative/competitive platforms).

Amazon is under intense scrutiny from Congress for its efforts to distort markets, surveil workers, crush unions, and pay workers less (not just musicians); the pandemic has only increased Amazon's power. There are more hearings scheduled soon.

TLDR: we can enjoy the lolz at the 8-bit goofiness juxtaposed with the visuals, but let's all spend less time dunking on Lars and more time trying to understand the actual state of power relations and help workers.

On that last point, join us Monday for this event on improving COVID unemployment benefits! https://t.co/peQaSkuGn5

And for good resources on Amazon, follow @ilsr @openmarkets @econliberties @athenaforall

Forgot to mention: the DMCA became law in 1998. Metallica’s lawsuit against Napster was in 2000. There are a lot of things that are frustrating about the state of the DMCA, but blaming Metallica for them makes no sense!