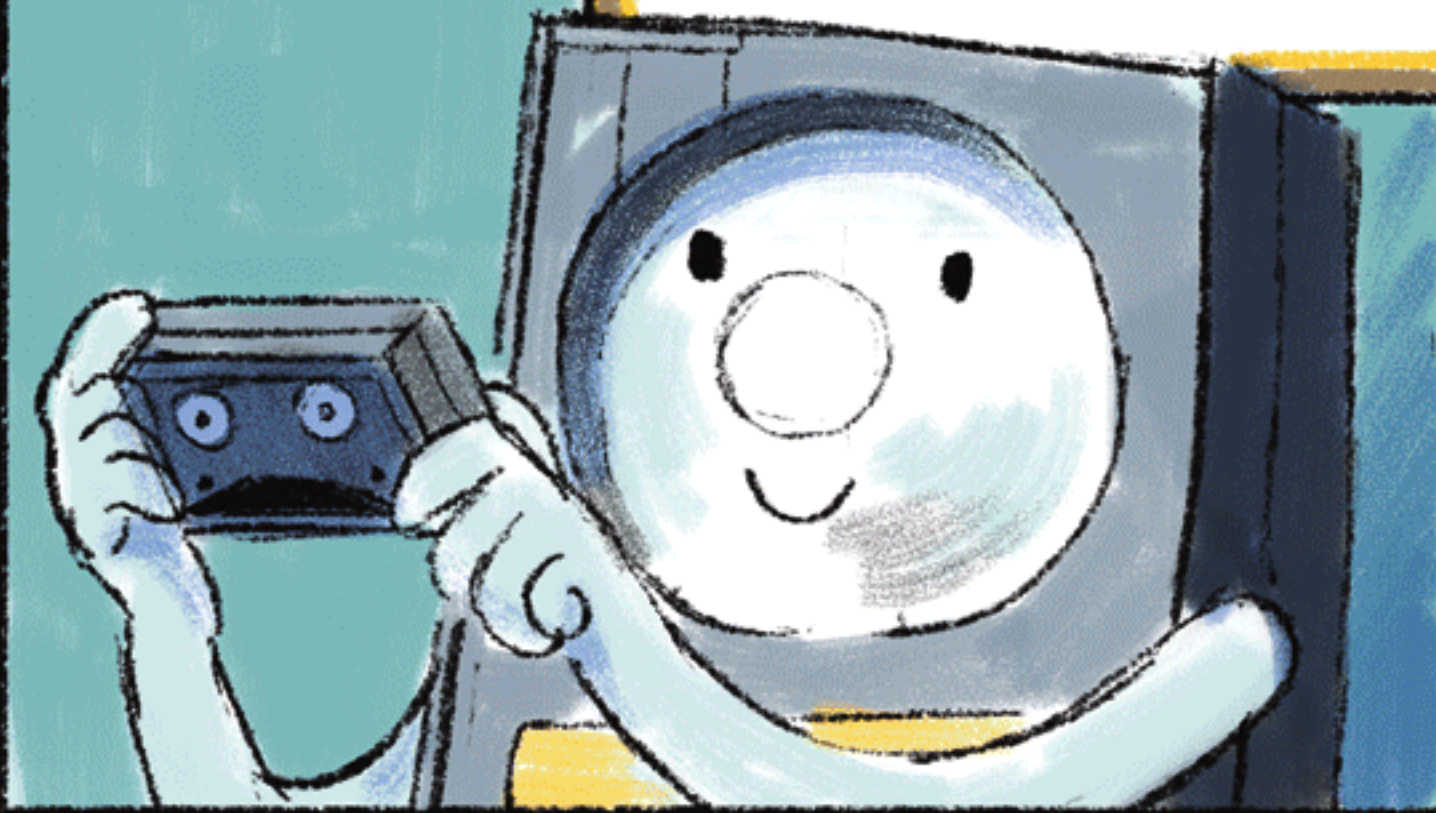
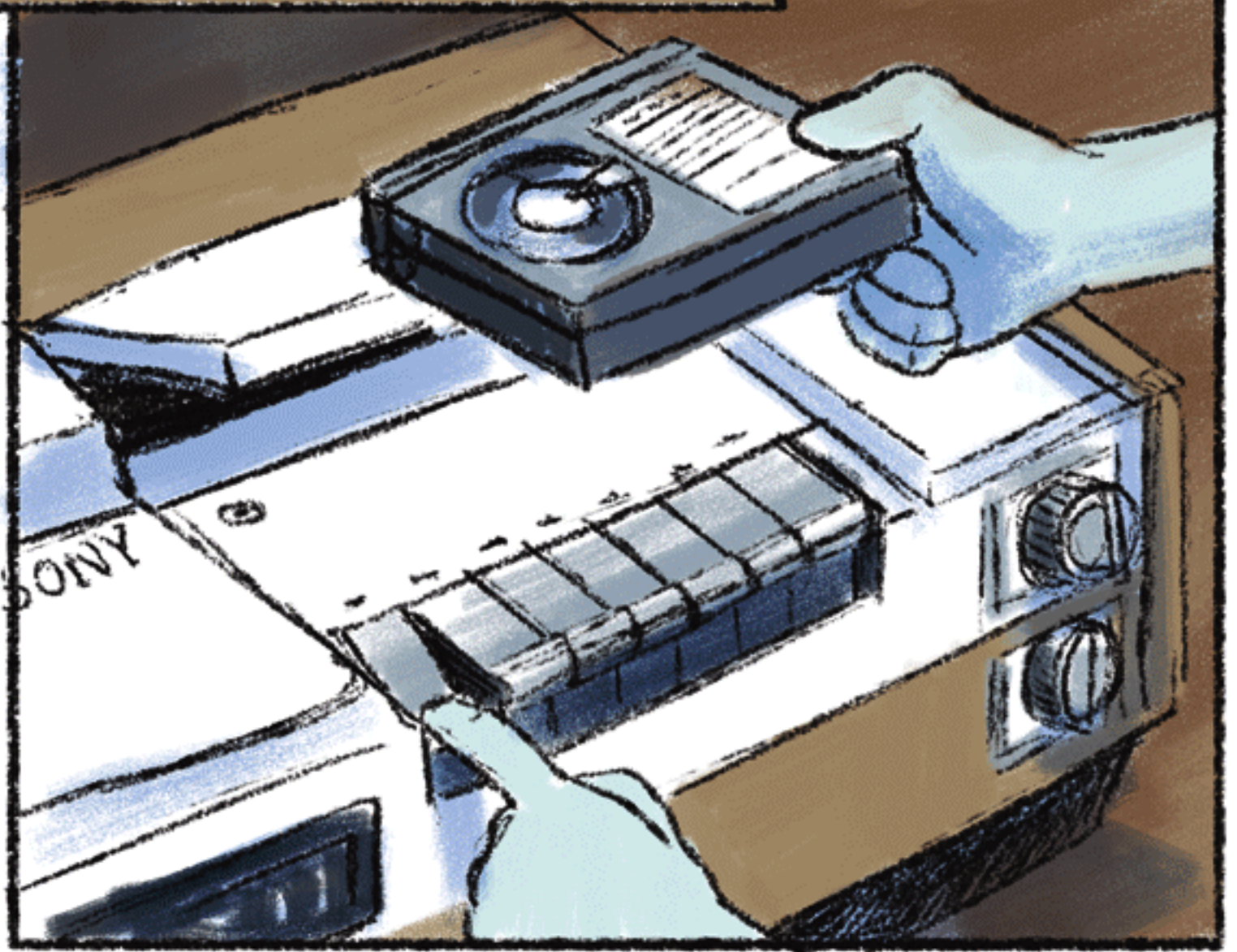


Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984)
(also known as the "Betamax case")

Written by Kyle K. Courtney, art by Jackie Roche

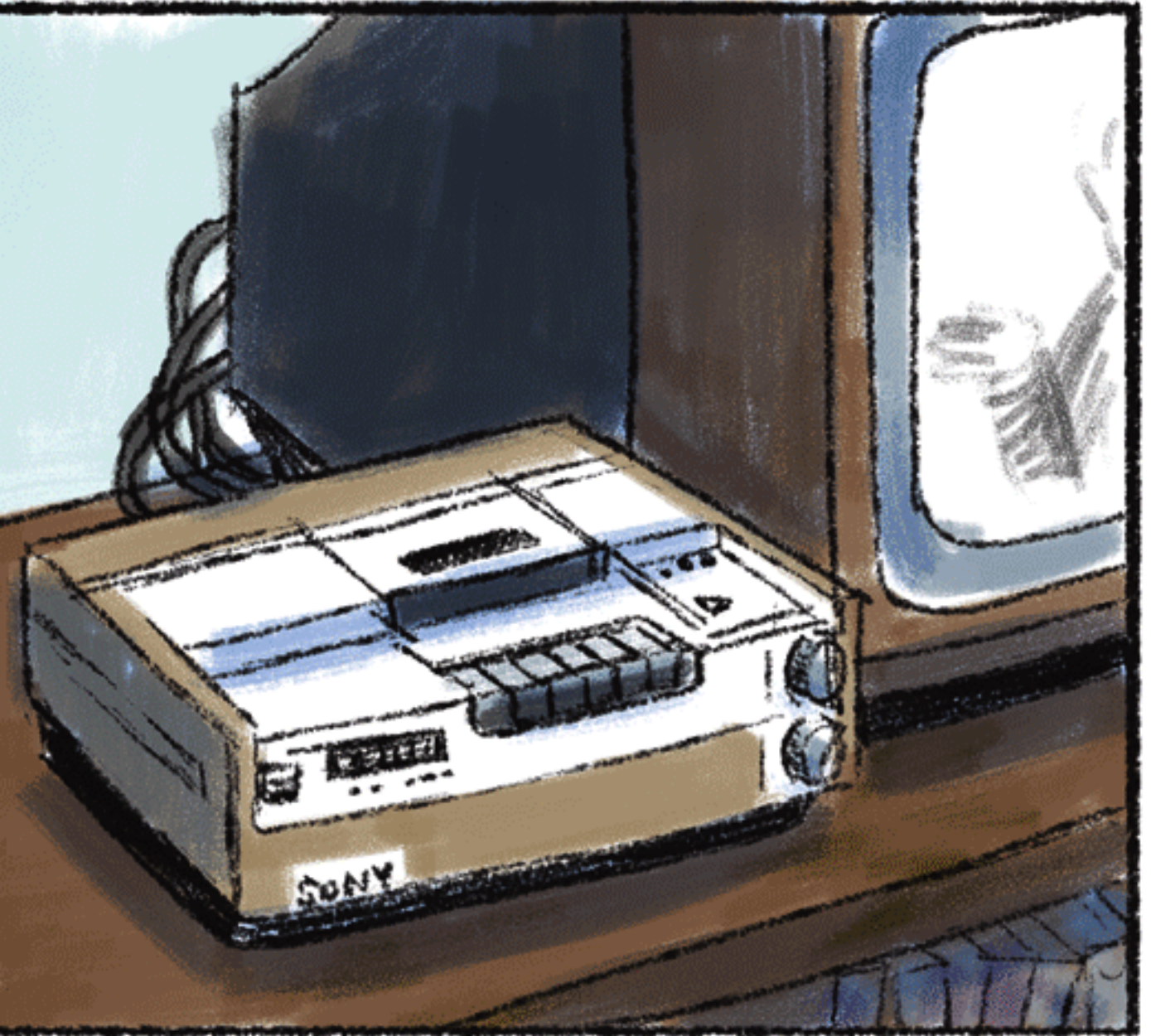


In 1975, Sony developed and marketed the Betamax—the first video recording device (VCR) designed for the public. The Betamax tape was the forerunner to the VHS.

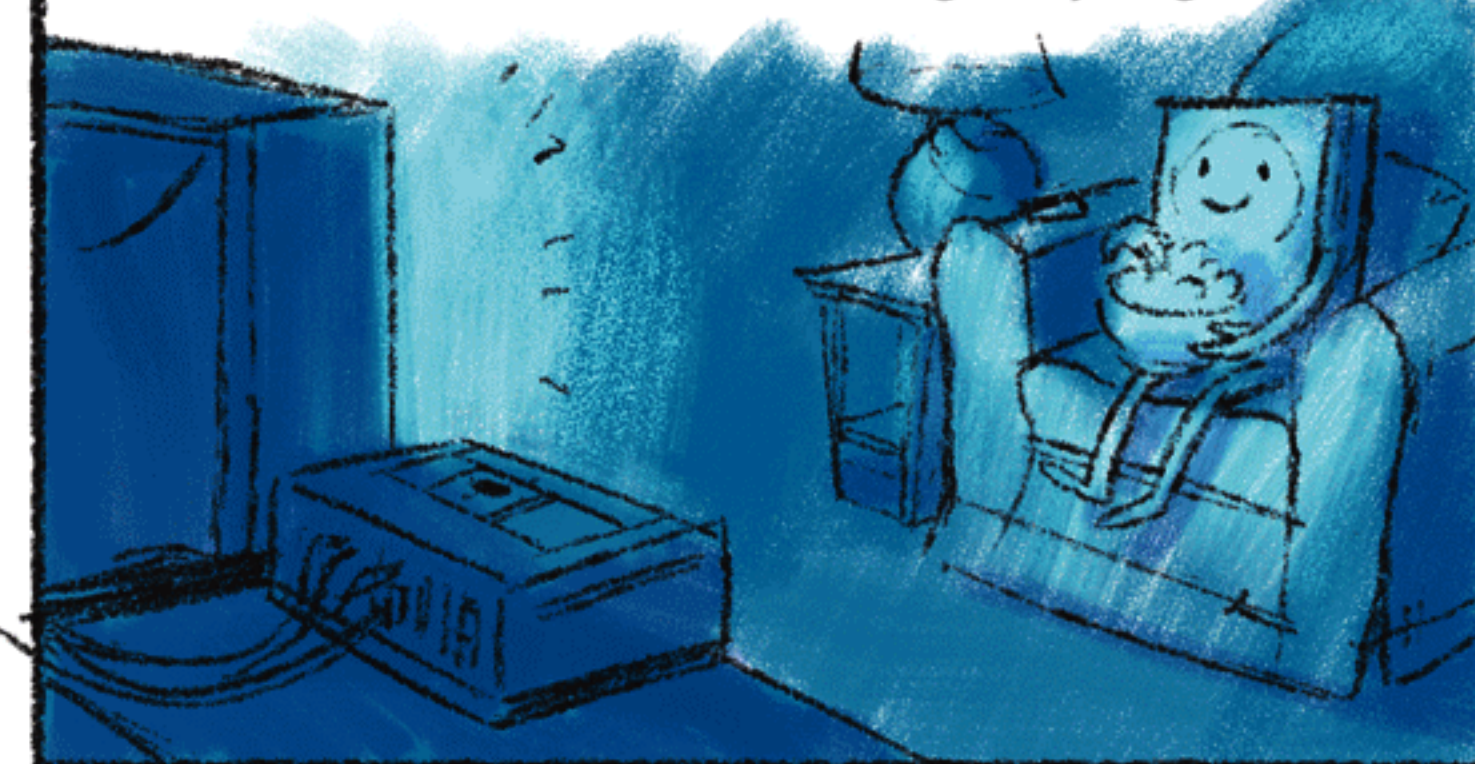


The first advertising began shortly before the release. The Betamax advertising firm wanted permission to use two Universal television shows in an upcoming newspaper advertisement:

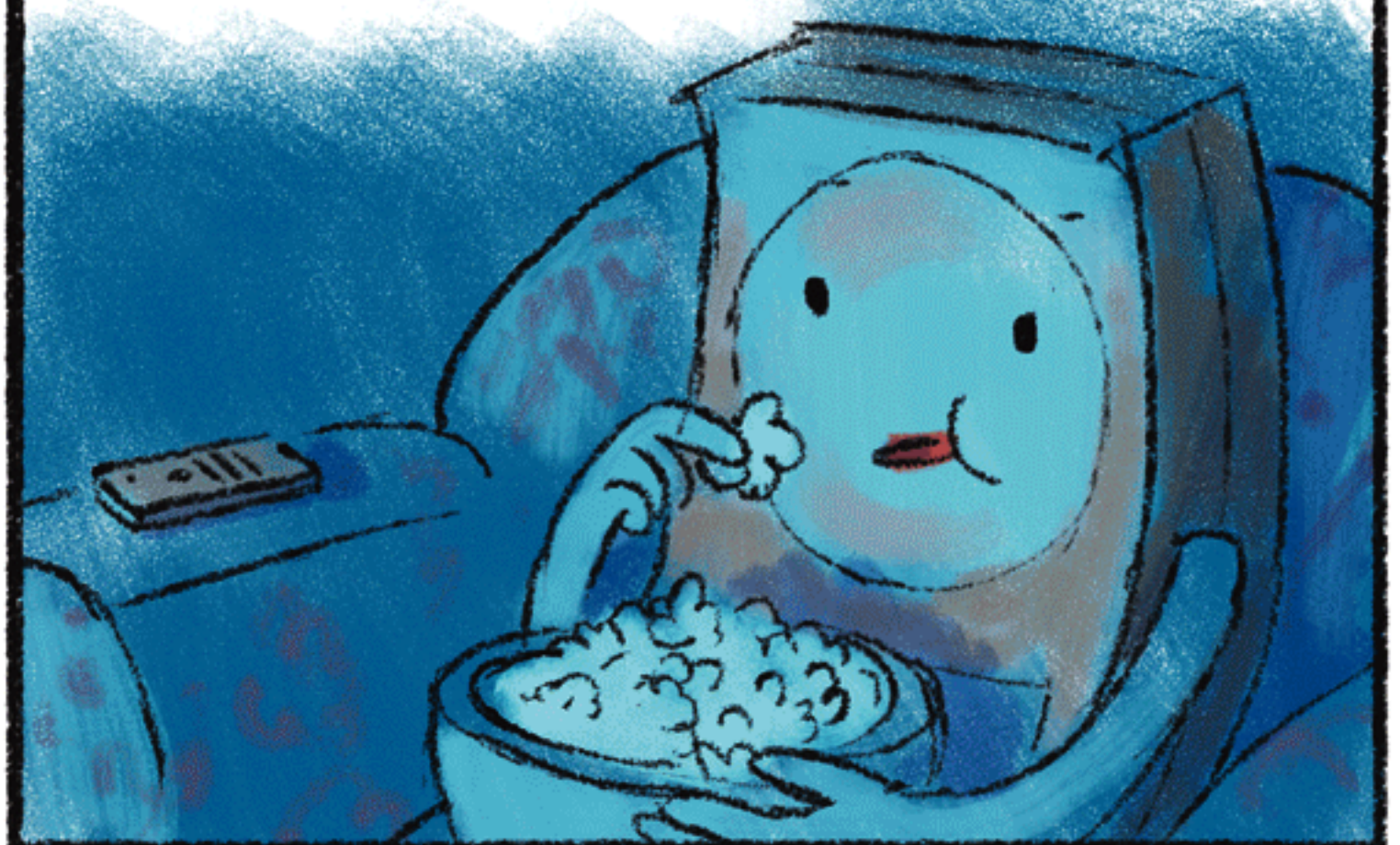
"Now you don't have to miss Kojak because you're watching Columbo (or vice versa).
Betamax - It's a Sony."



Betamax thought that Universal would embrace new technology that allowed two of its television shows (that appeared on different networks during the same time slot) to be viewed by the same audience via the magic of the VCR's time-shifting taping.



But Universal refused to grant permission use these TV shows in the Betamax advertising. The content industry was not happy with Sony's new VCR or its advertisement strategy.



Motion Picture Association of America (MPAA) President, Jack Valenti, told a House Judiciary Committee that VCRs "are to the American film industry what the Boston strangler was to women."



However, not all media figures were opposed to the VCR. At a later hearing, Congress heard testimony from Fred Rogers, the famed host of "Mr. Roger's Neighborhood" one of the greatest children's television shows of all time. Defending the VCR, Mr. Rogers said:

I have always felt that with the advent of all of this new technology that allows people to tape the Neighborhood off-the-air ...

they then become much more active in the programming of their family's television life.

Very frankly, I am opposed to people being programmed by others. My whole approach in broadcasting has always been "You are an important person just the way you are. You can make healthy decisions"

I just feel that anything that allows a person to be more active in the control of his or her life, in a healthy way, is important.



Universal Studios and the Walt Disney Company were among the media studios who were most suspicious of this VCR technology. They were concerned that widespread use of the VCR would destroy their TV and film markets.

Because the Betamax allowed users to videotape audiovisual copyrighted works without their permission, Universal Studios sued Sony for copyright infringement in 1976.

Their legal reasoning:

because Sony was manufacturing a device that could be used for infringement, Sony should be liable for any infringement committed by its purchasers.

The subsequent eight-year legal battle became known as "The Betamax Case."

Sony's answer to this suit raised various defenses, including, most importantly that the home recording of copyrighted broadcasts for noncommercial uses was exempted from the copyright law under fair use.

Initially, the trial court concluded that home VCR recording was protected by fair use.

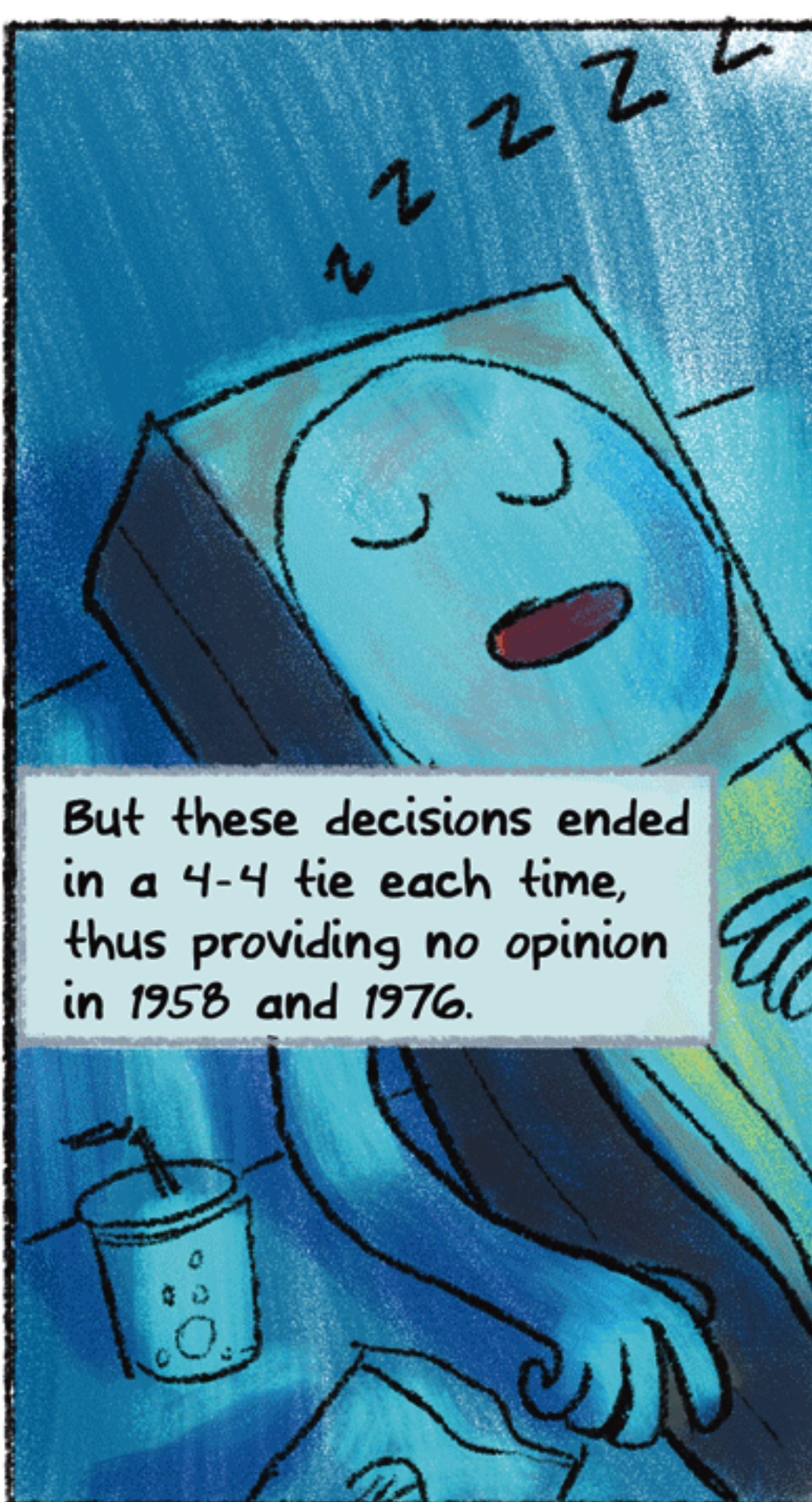
Later, the appeals court disagreed with some of the analysis and reversed and remanded the case back to the trial court.

This is when Sony appealed directly to the Supreme Court of the United States.

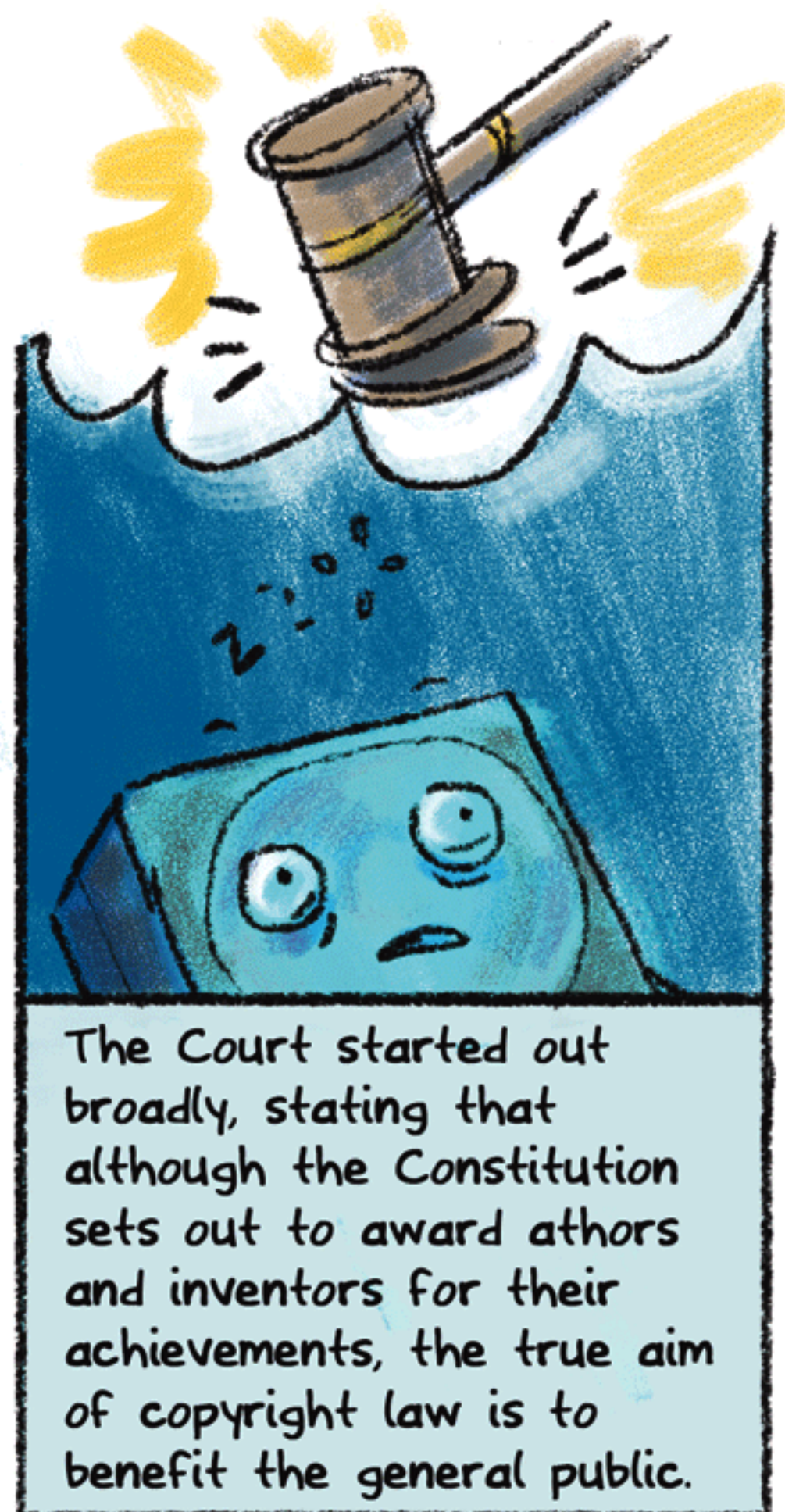


The Betamax case arrived at the Supreme Court in 1983. By this point, nearly 50 percent of homes in America had a VCR.

And, prior to the Betamax case, the Supreme Court had only heard two cases involving fair use.



But these decisions ended in a 4-4 tie each time, thus providing no opinion in 1958 and 1976.



The Court started out broadly, stating that although the Constitution sets out to award authors and inventors for their achievements, the true aim of copyright law is to benefit the general public.

The court acknowledged the need to balance authors' and inventors' interests in retaining control over their work with society's interest in the "free flow of ideas, information, and commerce."

The Four Factors of Fair Use

Factor #1: Purpose and character of use

The Supreme Court recognized that VCR users are those who "time-shift" programs, where time-shifting is defined by the Court as "the practice of recording a program to view it once at a later time..." They did not see the home user as a commercial user, for example, charging those to come over and view the taped material.

In fact, the Court stated, if the Betamax were used to make copies for a commercial or profit-making purpose, such use would presumptively be unfair.

The Court focused on this new character of the activity, time-shifting, finding it was clearly a "noncommercial, nonprofit activity."



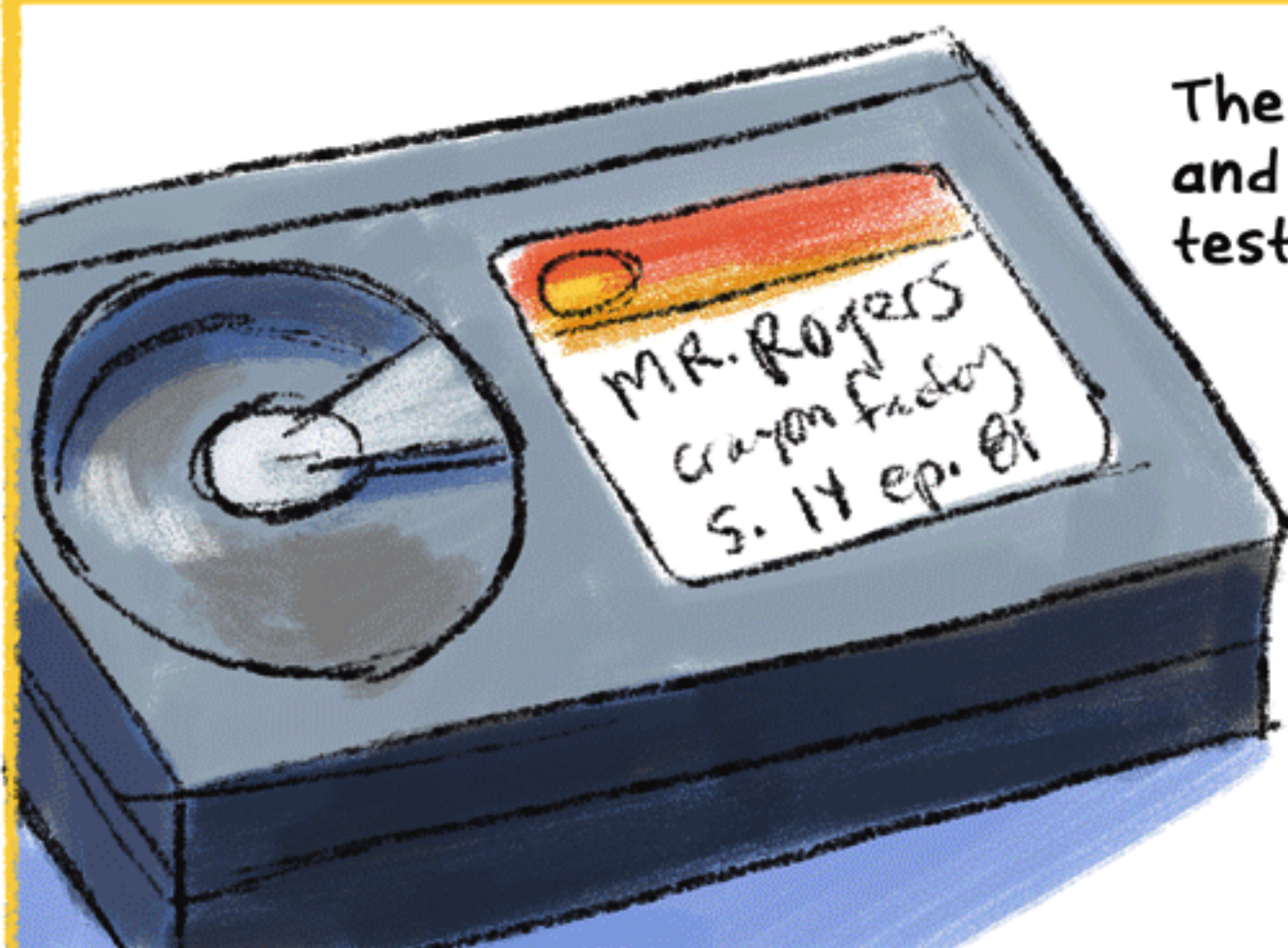
The Court also reasoned that because television broadcasts were being offered free of charge, the fact that home recording reproduced the entire work did not have the "ordinary effect of militating against a finding of fair use."



Additionally, some time-shifting was authorized and favored by copyright holders because it seemed to enlarge audience size.

Arguably, the rule created here by the Supreme Court was that home recording was a non-commercial activity and therefore presumptively a fair use.

Factors #2 and 3: Nature of Copyrighted Work and Amount and Substantiality of the Portion Taken

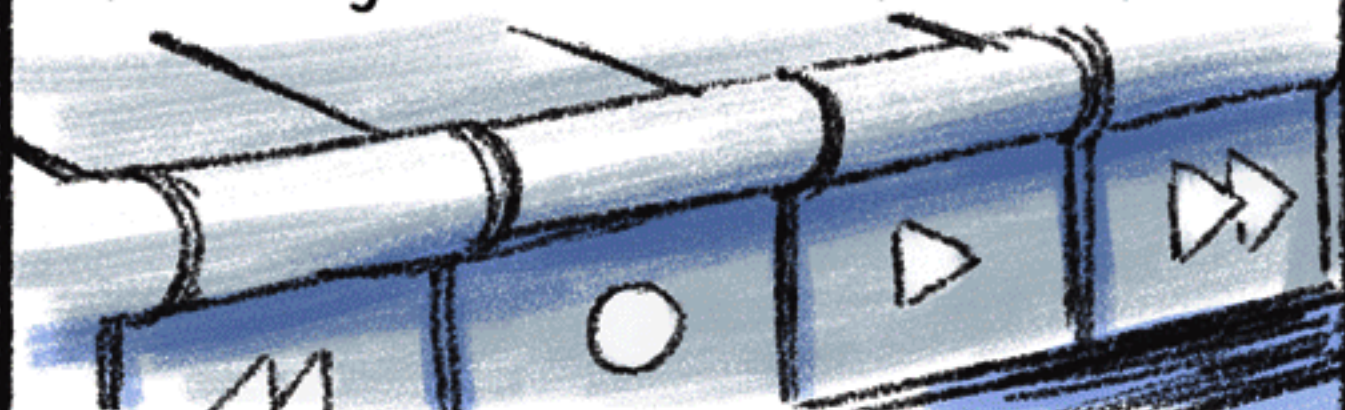


The Court's analysis of the second and third factors of the fair use test stated:

"when one considers the nature of a televised copyrighted audiovisual work, and that time-shifting merely enables a viewer to see such a work which he had been invited to witness in its entirety free of charge, the fact that the entire work is reproduced... does not have its ordinary effect of militating against a finding of fair use."

Factor #4: Effect of Use Upon the Potential Market

The Court admitted that "even copying for noncommercial purposes may impair the copyright holder's ability to obtain the rewards that Congress intended him to have."

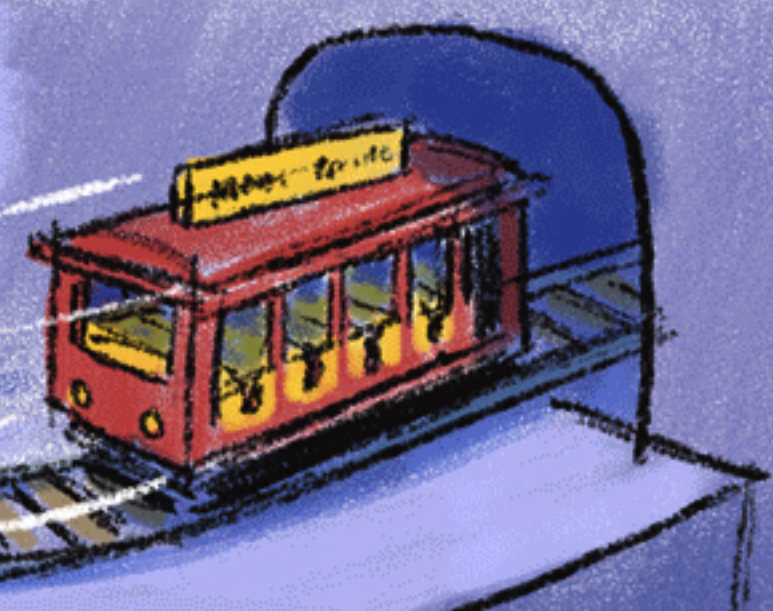


But here, the Court looked to the effect of the use of the VCR recorder and found no demonstrable effect upon the potential market.



Interestingly, what negligible damages the studios might have suffered from consumers who taped live shows was overshadowed by huge profits from the brand new VHS rental and sale market.

The Court cited Fred Rogers's opinion that there was societal benefit in increasing public access to television broadcasts.



Section 107 requires the copyright holder "to demonstrate some likelihood of harm" before the Court could find a violation of copyright law. Neither Universal Studios or the Walt Disney Company had shown this harm.



Oral arguments in the Betamax case were heard twice by the Supreme Court. It found, in a 5-4 decision, that the VCR was primarily utilized as a time-shifting device, and therefore a fair use.

Arguably, the Betamax case can be remembered for establishing a "Sony-style" fair use argument for adapting to new technology.

The Court decided that if the technology is capable of significant non-infringing uses, we shouldn't stifle the technology just because a smaller number of users might use the technology for infringement. This immunization of the technology manufacturer from contributory liability helped to foster the creation of new and vital technology - from personal computers and iPods, to sampling machines and TiVo.