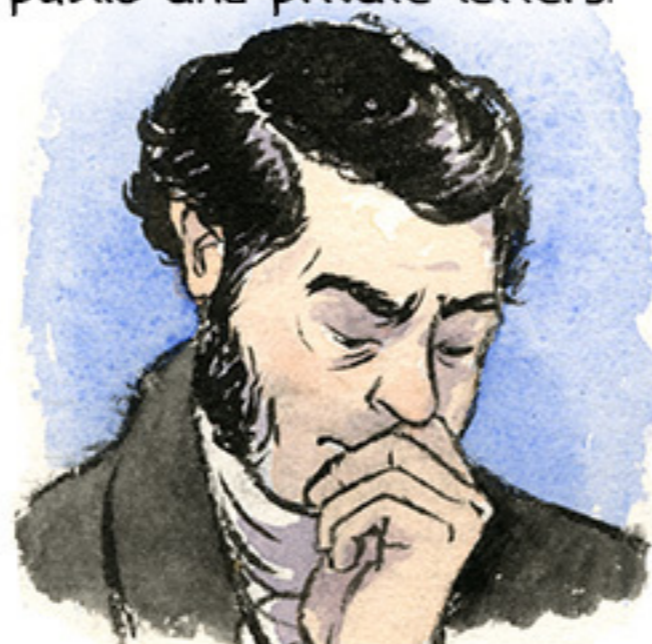


Jared Sparks, Harvard historian, was the proprietor of President Washington's public and private letters.



In 1837, he edited these letters and added notes, illustrations, and an original biography.



Charles Folsom, former Harvard Librarian, then published *The Writings of George Washington*.



In 1841, Rev. Charles Upham, another Harvard historian, published a work entitled *The Life of Washington in the Form of an Autobiography* with another Boston publisher, Bela Marsh.

2 volumes  
866 pages

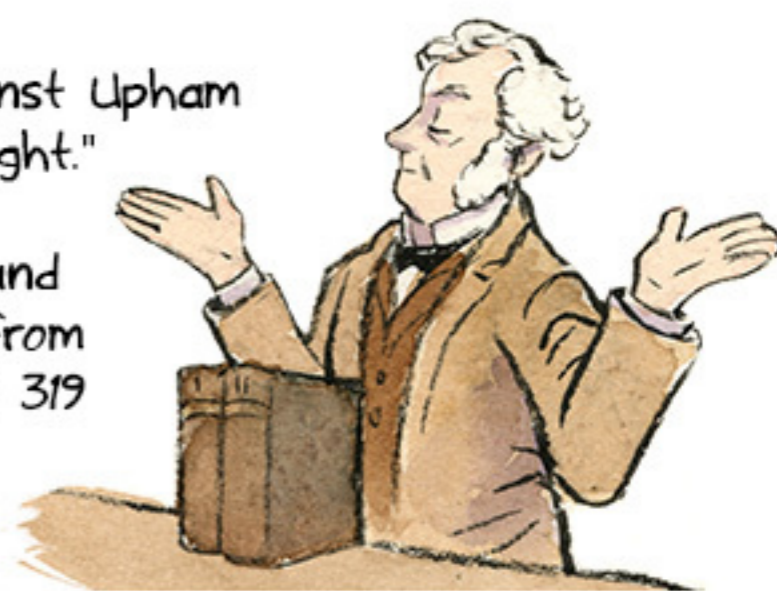


It claimed to be "by" Washington himself, since it was derived directly from works of Washington's own hand.



Sparks and Folsom brought suit against Upham and Marsh for "piracy of the copyright."

Court inquiries proved that Upham and Marsh copied 353 pages verbatim from *The Writings of George Washington*. 319 of the copied pages had not been published before Sparks' work.

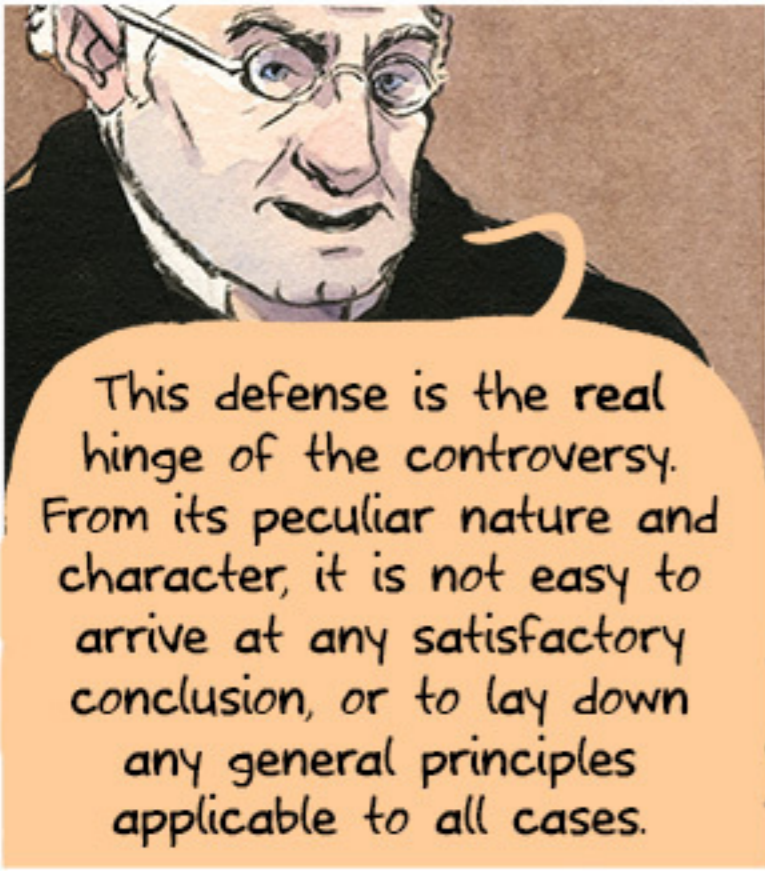


*Folsom v. Marsh* ended up in front of Justice Joseph Story, then Justice of the Supreme Court, Circuit Court judge for Massachusetts, Harvard Law professor, and already a legendary jurist in American law.

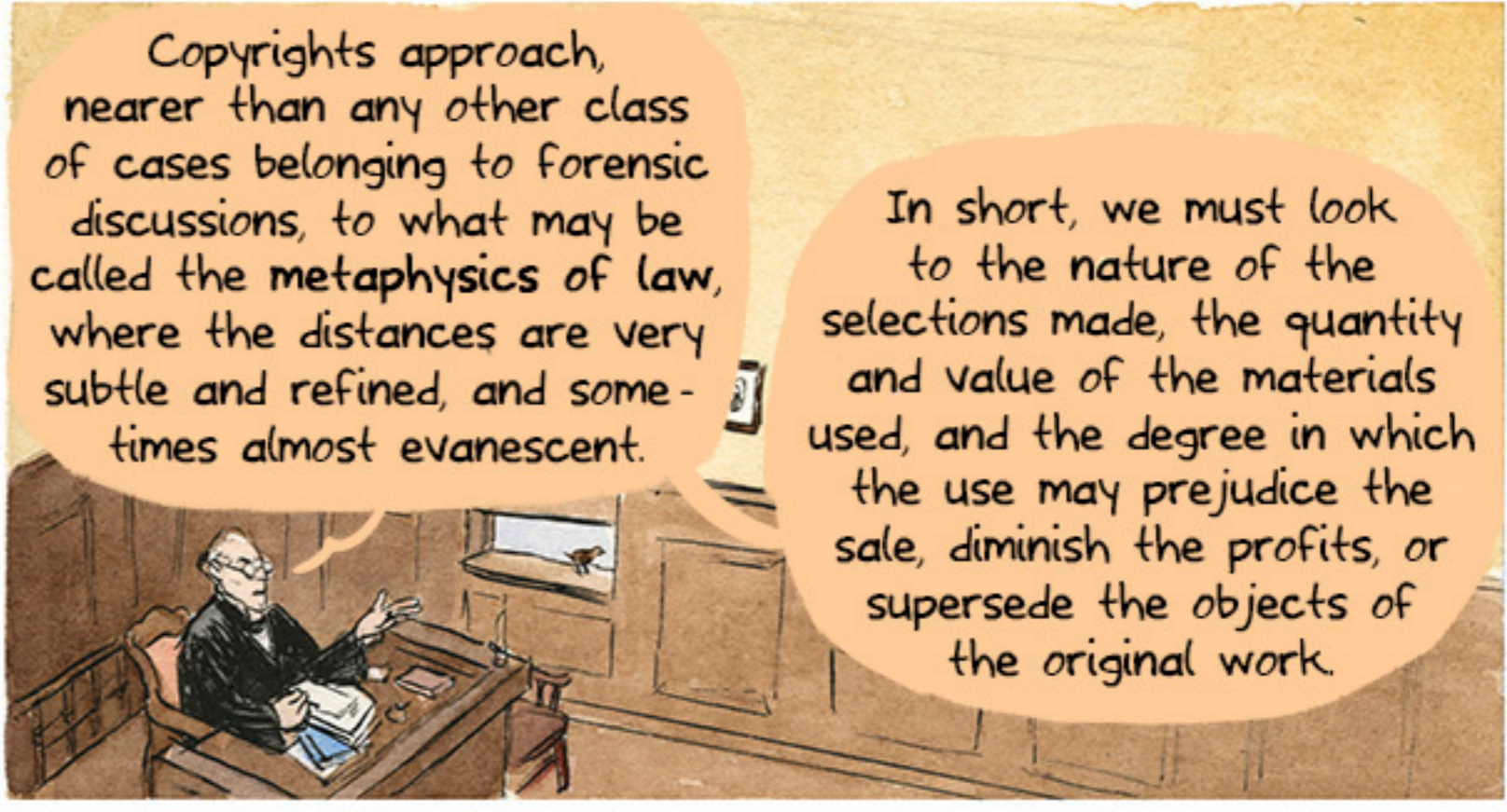


I have made use of Sparks' work as I might do in a work entirely distinct from and independent of said work by Sparks.

An author has a right to quote, select, extract, or abridge from another, in the composition of a work essentially new.



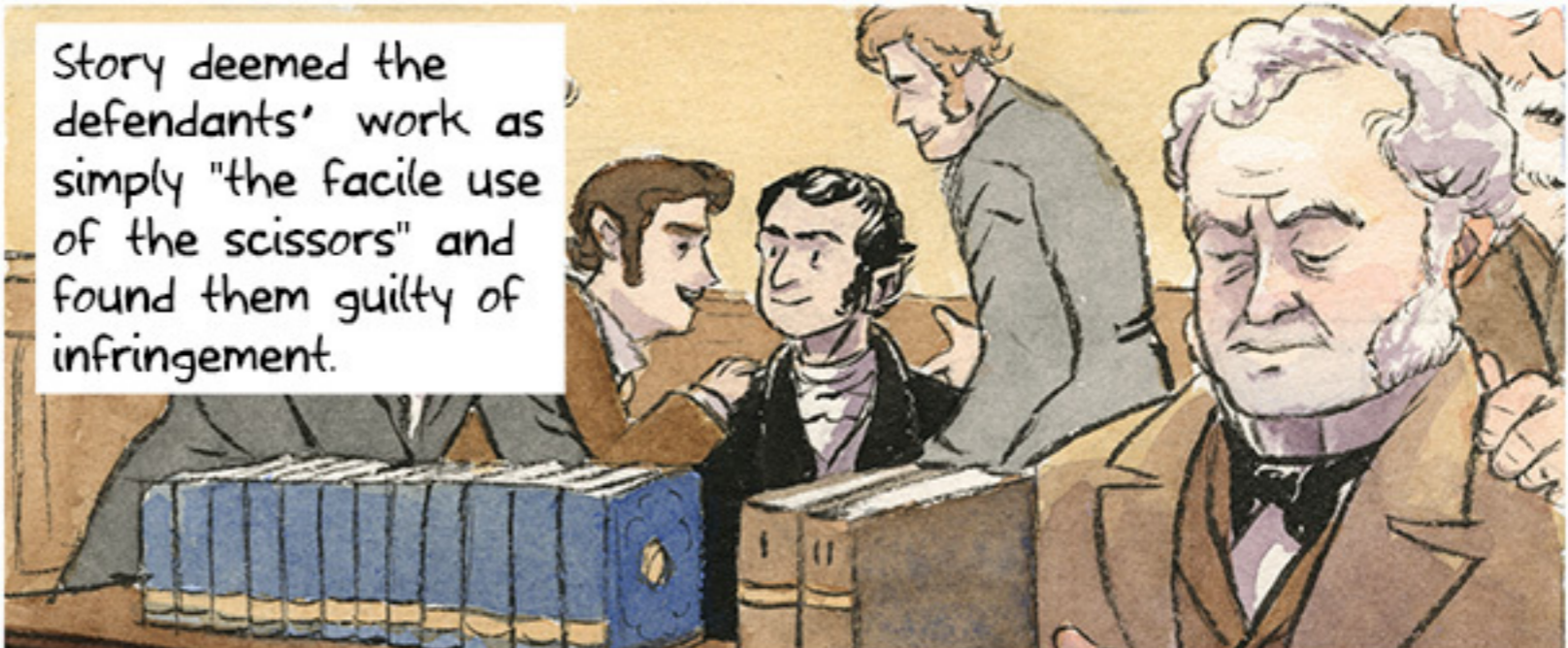
This defense is the real hinge of the controversy. From its peculiar nature and character, it is not easy to arrive at any satisfactory conclusion, or to lay down any general principles applicable to all cases.



Copyrights approach, nearer than any other class of cases belonging to forensic discussions, to what may be called the metaphysics of law, where the distances are very subtle and refined, and sometimes almost evanescent.

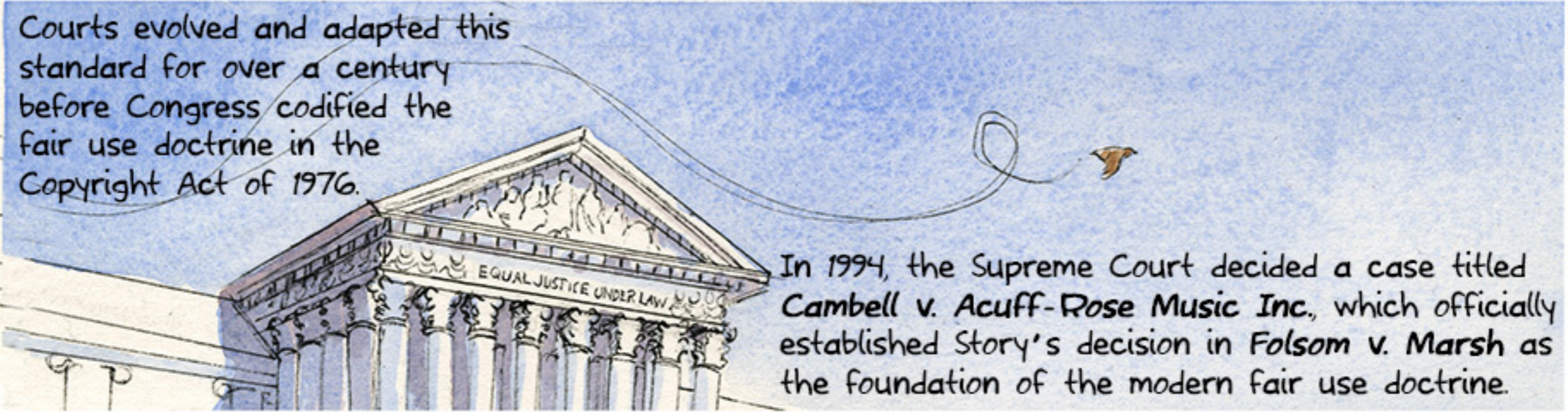
In short, we must look to the nature of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, diminish the profits, or supersede the objects of the original work.

His exact language foreshadowed the four factor method adopted for fair use, embodied in the modern section 107 of the Copyright Act.



Story deemed the defendants' work as simply "the facile use of the scissors" and found them guilty of infringement.

This was despite his appreciation of the "very meritorious labors of the defendants, in their great undertaking of a series of work adapted to school libraries."



Courts evolved and adapted this standard for over a century before Congress codified the fair use doctrine in the Copyright Act of 1976.

In 1994, the Supreme Court decided a case titled *Cambell v. Acuff-Rose Music Inc.*, which officially established Story's decision in *Folsom v. Marsh* as the foundation of the modern fair use doctrine.

Fair use is important to artists, teachers, news reporters, musicians, writers, students, scholars, and our entire economy.

In a study commissioned by the Computer and Communications Industry Association, industries depending upon fair use generated revenue averaging \$4.6 trillion, contributed \$2.4 trillion in value-add to the U.S. economy (roughly one-sixth of total U.S. GDP), and aids the work of approximately 1 in 8 U.S. workers!

Thank you, Justice Story!



Notes:

Case information and testimony from *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841).

(1) <http://www.ccianet.org/wp-content/uploads/library/CCIA-FairUseintheUSEconomy-2011.pdf>