



Three's Company: The Obsolescence of the Third Party Doctrine

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Abstract

The Supreme Court has consistently maintained that the Fourth Amendment protects not only property interests, but also certain expectations of privacy. In *Katz v. United States* (1967), the Court held that when one “seeks to preserve something as private,” and his expectation of privacy is “one that society is prepared to recognize as reasonable,” authorities need a warrant to collect that information. That standard has come to be known as the Reasonable Expectation of Privacy Test. A decade later, the Supreme Court created the Third Party Doctrine by ruling that any information shared with a third party fails the Reasonable Expectation of Privacy Test. The Court based this ruling on the premise that any information relinquished to a third party cannot reasonably be expected to remain private. My research suggests that premise is false.

Methodology & Results

To measure what expectations of privacy society views as reasonable, I distributed a survey to a representative sample of Americans. A wide majority of respondents believe that someone’s call log, Google searches, Nest data, cellphone location, bank records, and email history can all reasonably be expected to remain private—even though that information is shared with a third party. These results are significant because they suggest that the Third Party Doctrine contradicts the Test upon which it is based, calling into question the Doctrine’s validity.

Figure 1 The Percent of Americans that Believe There Is a Reasonable Expectation of Privacy from the Government by Data Type

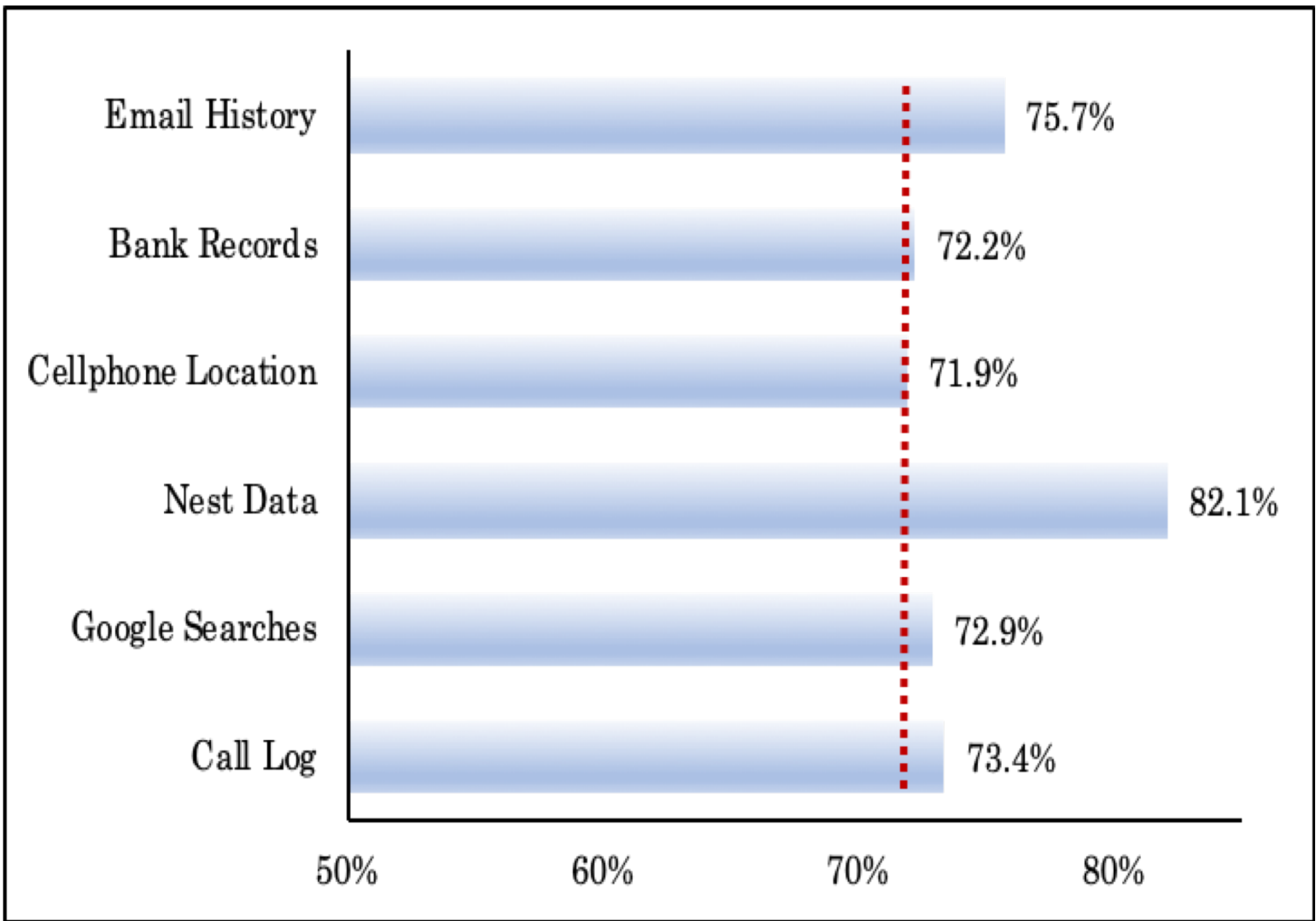


Figure 2 The Percent of Americans that Believe There Is a Reasonable Expectation of Privacy from the Government by Data Type and Cohort

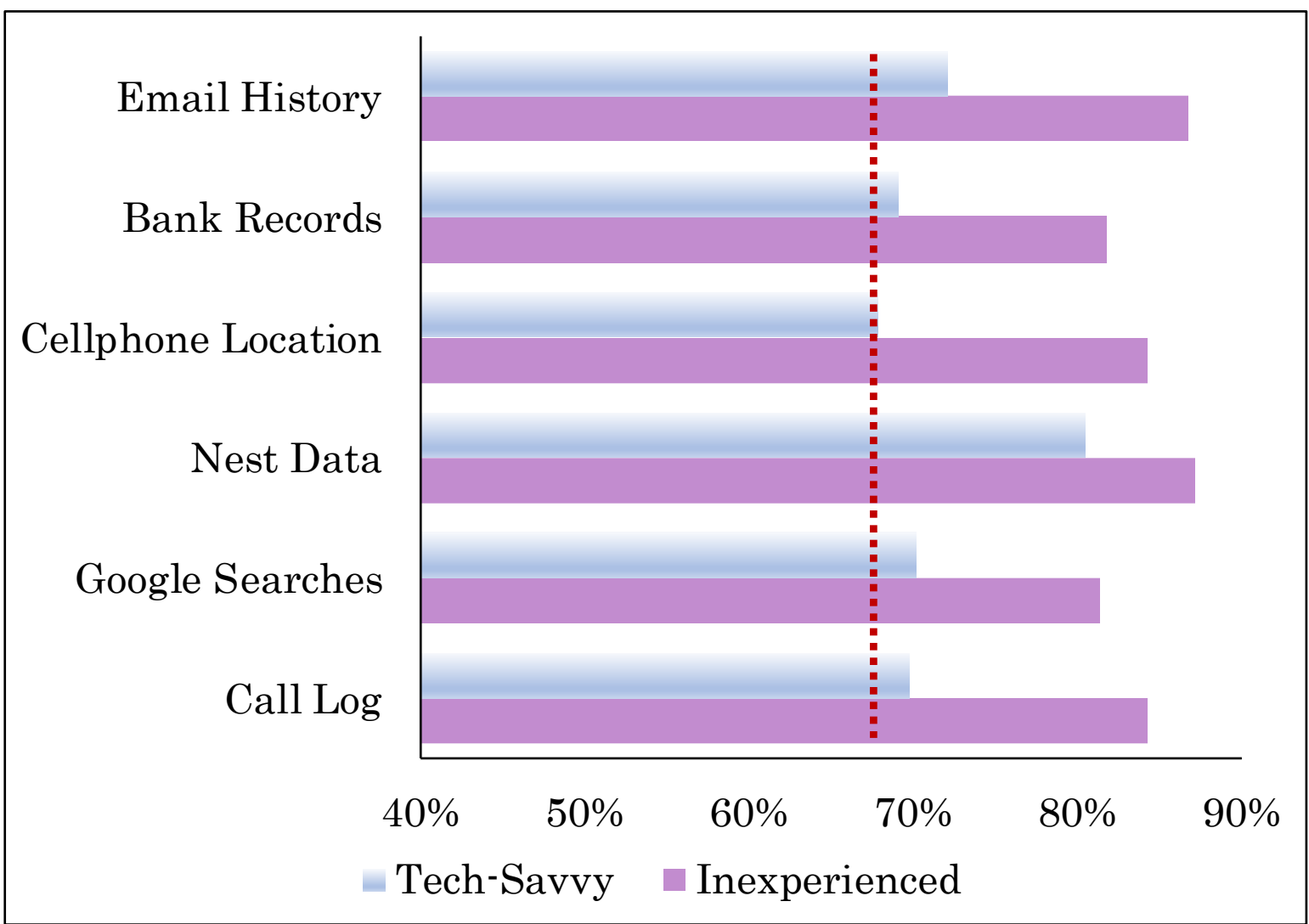
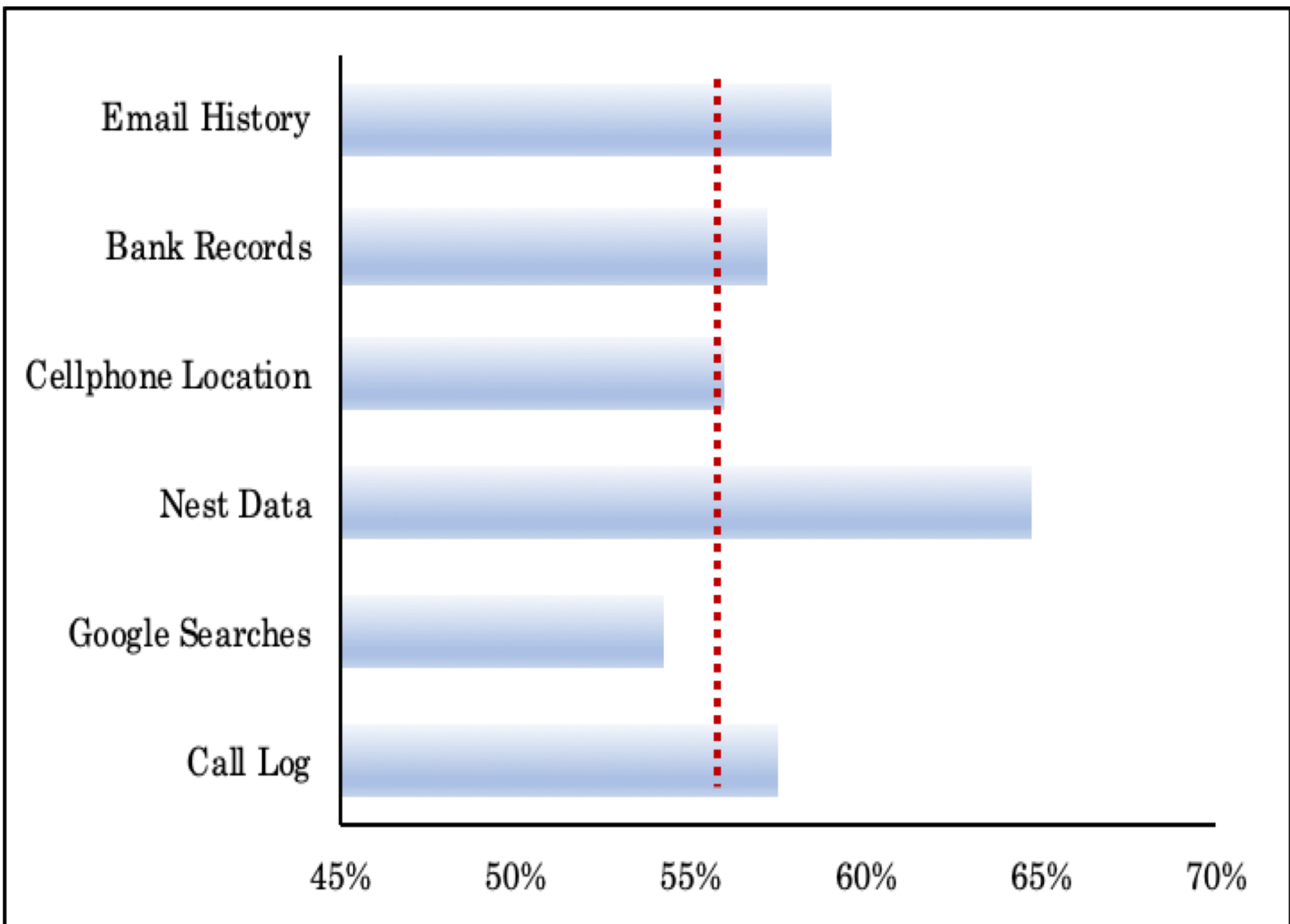


Figure 3 The Percent of Americans that Believe There Is a Reasonable Expectation of Privacy from Everyone by Data Type



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