where there had been an invasion—a technical trespass—electronic surveillance was deemed subject to Fourth Amendment restrictions.[38]

The Court later rejected this approach. "The premise that property interests control the right of the government to search and seize has been discredited. . . . We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and have increasingly discarded fictional and procedural barriers rested on property concepts."[39] Thus, because the Amendment "protects people, not places," the requirement of actual physical trespass is dispensed with and electronic surveillance was made subject to the Amendment's requirements.[40]

The new test, propounded in *Katz v. United States*, is whether there is an expectation of privacy upon which one may "justifiably" rely.[41] "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."[42] That is, the "capacity to claim the protection of the Amendment depends not upon a property right in the invaded place but upon whether the area was one in which there was reasonable expectation of freedom from governmental intrusion."[43]

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[38] Silverman v. United States, 365 U.S. 505 (1961) (spike mike pushed through a party wall until it hit a heating duct).

[39] Warden v. Hayden, 387 U.S. 294, 304 (1967).

[40] Katz v. United States, 389 U.S. 347, 353 (1967) (warrantless use of listening and recording device placed on outside of phone booth violates Fourth Amendment). *See also* Kyllo v. United States, 533 U.S. 27, 32–33 (2001) (holding presumptively unreasonable the warrantless use of a thermal imaging device to detect activity within a home by measuring heat outside the home, and noting that a contrary holding would permit developments in police technology "to erode the privacy guaranteed by the Fourth Amendment."

[41] 389 U.S. at 353. Justice Harlan, concurring, formulated a two pronged test for determining whether the privacy interest is paramount: "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" Id. at 361.

[42] 389 U.S. at 351–52.

[43] Mancusi v. DeForte, 392 U.S. 364, 368 (1968) (official had a reasonable expectation of privacy in an office he shared with others, although he owned neither the premises nor the papers seized). Minnesota v. Olson, 495 U.S. 91 (1990) (overnight guest in home has a reasonable expectation of privacy). *But cf.* Minnesota v. Carter, 525 U.S. 83 (1998) (a person present in someone else's apartment for only a few hours for the purpose of bagging cocaine for later sale has no legitimate expectation of privacy); *Cf.* Rakas v. Illinois, 439 U.S. 128 (1978) (auto passengers demonstrated no legitimate expectation of privacy in glove compartment or under seat of auto). Property rights are still protected by the Amendment, however. A "seizure" of property can occur when there is some meaningful interference with an individual's possessory interests in that property, and regardless of whether there is any interference with the individual's privacy interest. Soldal v. Cook County, 506 U.S. 56 (1992) (a seizure occurred when sheriff's deputies assisted in the disconnection and re-