lation of non-obscene but sexually explicit or "indecent" expression reduces the importance (outside the criminal area) of whether material is classified as obscene.

Even as to materials falling within the constitutional definition of obscene, the Court has recognized a limited private, protected interest in possession within the home,[1343] unless those materials constitute child pornography. *Stanley v. Georgia* was an appeal from a state conviction for possession of obscene films discovered in appellant's home by police officers armed with a search warrant for other items which were not found. The Court reversed, holding that the mere private possession of obscene materials in the home cannot be made a criminal offense. The Constitution protects the right to receive information and ideas, the Court said, regardless of their social value, and "that right takes on an added dimension" in the context of a prosecution for possession of something in one's own home. "For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy."[1344] Despite the unqualified assertion in *Roth* that obscenity was not protected by the First Amendment, the Court observed, it and the cases following were concerned with the governmental interest in regulating commercial distribution of obscene materials. *Roth* and the cases following that decision are not impaired by today's decision, the Court insisted,[1345] but in its rejection of each of the state contentions made in support of the conviction the Court appeared to be rejecting much of the basis of *Roth*. First, there is no governmental interest in protecting an individual's mind from the effect of obscenity. Second, the absence of ideological content in the films was irrelevant, since the Court will not draw a line between transmission of ideas and entertainment. Third, there is no empirical evidence to support a contention that exposure to obscene materials may incite a person to antisocial conduct; even if there were such evidence, enforcement of laws proscribing the offensive conduct is the answer. Fourth, punishment of mere possession is not necessary to punishment of distribution. Fifth, there was little danger that private possession would give rise to the objections underlying a proscription upon public dissemination, exposure to children and unwilling adults.[1346]

Stanley's broad rationale has been given a restrictive reading, and the holding has been confined to its facts. Any possible implication that *Stanley* was applicable outside the home and recognized

---

[1343] Stanley v. Georgia, 394 U.S. 557 (1969).
[1344] 394 U.S. at 564.
[1345] 394 U.S. at 560–64, 568.
[1346] 394 U.S. at 565–68.