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Case No: CO/3615/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2007

Before :

MR JUSTICE BURTON

Between :

Stuart Dimmock	<u>Claimant</u>
- and -	
Secretary of State for Education and Skills	<u>Defendant</u>
(now Secretary of State for Children, Schools and Families)	

Mr Paul Downes and Miss Emily Saunderson (instructed by **Malletts**) for the **Claimant**
Mr Martin Chamberlain (instructed by Treasury Solicitors) for the **Defendant**

Hearing dates: 27, 28 September, 1, 2 October 2007

Judgment

Mr Justice Burton:

1. Stuart Dimmock is a father of two sons at state school and a school governor. He has brought an application to declare unlawful a decision by the then Secretary of State for Education and Skills to distribute to every state secondary school in the United Kingdom a copy of former US Vice-President Al Gore's film, *An Inconvenient Truth* ("AIT"), as part of a pack containing four other short films and a cross-reference to an educational website ("Teachernet") containing a dedicated Guidance Note. In the event the film has already been distributed – no point is taken by the Defendant on any delay by the Claimant in bringing his claim – so that no injunction to restrain such distribution is possible. Plainly if the decision and/or the distribution is declared unlawful, the films could be recalled. Permission was refused on paper by Beatson J, but he ordered that the renewed application for permission be adjourned so as to come on as a "rolled-up" hearing at the same time as, and immediately prior to, the listing of the hearing of the application itself if permission were granted. In the event, after hearing argument, I granted permission, and this is the judgment on the application. I have had very considerable assistance from both the very able Counsel, Paul Downes for the Claimant and Martin Chamberlain for the Defendant, and their respective teams.
2. The context and nub of the dispute are the statutory provisions described in their side headings as respectively relating to "*political indoctrination*" and to the "*duty to secure balanced treatment of political issues*" in schools, now contained in ss406 and 407 of the Education Act 1996, which derive from the identical provisions in ss44 and 45 of the Education (No 2) Act 1986. The provisions read as follows:

"406. The local education authority, governing body and head teachers shall forbid ...

the promotion of partisan political views in the teaching of any subject in the school.

407. The local education authority, governing body and head teacher shall take such steps as are reasonably practicable to secure that where political issues are brought to the attention of pupils while they are

(a) in attendance at a maintained school, or

(b) taking part in extra-curricular activities which are provided or organised for registered pupils at the school by or on behalf of the school

they are offered a balanced presentation of opposing views."

3. I viewed the film at the parties' request. Although I can only express an opinion as a viewer rather than as a judge, it is plainly, as witnessed by the fact that it received an Oscar this year for best documentary film, a powerful, dramatically presented and highly professionally produced film. It is built round the charismatic presence of the ex-Vice-President, Al Gore, whose crusade it now is to persuade the world of the dangers of climate change caused by global warming. It is now common ground that

it is not simply a science film – although it is clear that it is based substantially on scientific research and opinion – but that it is a political film, albeit of course not party political. Its theme is not merely the fact that there is global warming, and that there is a powerful case that such global warming is caused by man, but that urgent, and if necessary expensive and inconvenient, steps must be taken to counter it, many of which are spelt out. Paul Downes, using persuasive force almost equivalent to that of Mr Gore, has established his case that the views in the film are political by submitting that Mr Gore promotes an apocalyptic vision, which would be used to influence a vast array of political policies, which he illustrates in paragraph 30 of his skeleton argument:

"(i) Fiscal policy and the way that a whole variety of activities are taxed, including fuel consumption, travel and manufacturing ...

(ii) Investment policy and the way that governments encourage directly and indirectly various forms of activity.

(iii) Energy policy and the fuels (in particular nuclear) employed for the future.

(iv) Foreign policy and the relationship held with nations that consume and/or produce carbon-based fuels."

4. Martin Chamberlain, who, with equal skill, has adopted a very realistic position on the part of the Defendant, does not challenge that the film promotes political views. There is thus no need to consider any analysis or definition of the word '*political*' (which is plainly not limited to party political) such as that in **McGovern v AG** [1982] Ch 321 at 340.
5. Channel 4 has produced a film which was referred to during the hearing, although I have not seen it, which presents a counter-view, a sceptical approach to the climate change debate called "The Great Global Warming Swindle". This has not been sent to schools, although there is reference to it in the Guidance Note on the website, to which I have referred.
6. It is clear that the Defendant understandably formed the view that AIT was an outstanding film, and that schools should be enabled to show it to pupils. News releases were issued on 2 February 2007 by the Department for Education and Skills (I shall ignore its subsequent change of name) ("DES") and by DEFRA, the Department for Environment, Food and Rural Affairs. The DES news release read in material part:

"Climate change film distributed to all secondary schools.

The powerful Al Gore film "An Inconvenient Truth" will form part of a pack on climate change sent to every secondary school in England, Environment Secretary David Milliband and Education Secretary Alan Johnson announced today. The film documents former US Vice President Al Gore's personal

mission to highlight the issues surrounding global warming and inspire actions to prevent it.

Mr Milliband said:

'The debate over the science of climate change is well and truly over, as demonstrated by the publication of today's report by the IPCC' [Intergovernmental Panel on Climate Change]. 'Our energies should now be channelled into how we respond in an innovative and positive way in moving to a low carbon future. I was struck by the visual evidence the film provides, making clear that the changing climate is already having an impact on our world today, from Mount Kilimanjaro to the Himalayan mountains. As the film shows, there is no reason to feel helpless in the face of this challenge. Everyone can play a part along with government and business in making a positive contribution and helping to prevent climate change.'

Mr Johnson added:

'With rising sea temperatures, melting icecaps and frequent reminders about our own 'carbon footprints', we should all be thinking about what we can do to preserve the planet for future generations. Children are the key to changing society's long term attitude to the environment. Not only are they passionate about saving the planet but children also have a big influence over their own family's lifestyles and behaviour. Al Gore's film is a powerful message about the fragility of our planet and I am delighted that we are able to make sure that every secondary school in the country has a copy to stimulate children into discussing climate change and global warming in school classes.'

7. In the DEFRA leaflet there was the same quotation from Mr Milliband, but, instead of the quotation from Mr Johnson, there was this one sentence summary:

"Mr Johnson said that influencing the opinions of children was crucial to developing a long term view on the environment among the public."

8. After the pre-action correspondence from the Claimant, and on the very day the Judicial Review Claim Form was issued, a somewhat differently worded news release was issued by the Defendant dated 2 May 2007:

"English Secondary Schools Climate Change Pack.

A resource pack to help teachers and pupils explore and understand the issues surrounding climate change was sent to every secondary school in England today. The pack, which includes the Al Gore film An Inconvenient Truth and a number of other resources, was developed by DEFRA and the

Department for Education and Skills. It is accompanied by online teaching guides showing how to use the resources in the pack in science, geography and citizenship lessons.

Schools Minister Jim Knight said:

'Climate change is one of the most important challenges facing our planet today. This pack will help to give young people information and inspiration to understand and debate the issues around climate change, and how they as individuals and members of the community should respond to it.'

9. The explanation for the distribution to all schools is now given in these proceedings in the witness statement of Ms Julie Bramman of the DES:

"8. ...I should say at once that it was recognised from the start that parts of the Film contained views about public policy and how we should respond to climate change. The aim of distributing the film was not to promote those views, but rather to present the science of climate change in an engaging way and to promote and encourage debate on the political issues raised by that science."

10. I turn to deal with the outstanding issues of law relating to the construction of the two relevant statutory provisions. These are, in s406, the meaning of *partisan*, as in *partisan political views*: and the meaning and ambit of the duty of the local education authority etc to "*forbid the promotion of partisan political views in the teaching of any subject in the school*". In s407 the dispute has been as to the meaning of the duty to "*offer a balanced presentation of opposing views*" when "*political issues are brought to the attention of pupils*".

Partisan

11. Again there was not in the event much difference between the parties in this regard. Although there was some earlier suggestion on behalf of the Defendant that *partisan* might relate to 'party political', it soon became clear that it could not be and is not so limited. Mr Downes pointed to dictionary definitions suggesting the relevance of commitment, or adherence to a cause. In my judgment, the best simile for it might be "*one sided*". Mr Downes, in paragraph 27 of his skeleton argument, helpfully suggested that there were factors that could be considered by a court in determining whether the expression or promotion of a particular view could evidence or indicate *partisan promotion* of those views:

"(i) A superficial treatment of the subject matter typified by portraying factual or philosophical premises as being self-evident or trite with insufficient explanation or justification and without any indication that they may be the subject of legitimate controversy; the misleading use of scientific data; misrepresentations and half-truths; and one-sidedness.

(ii) *The deployment of material in such a way as to prevent pupils meaningfully testing the veracity of the material and forming an independent understanding as to how reliable it is.*

(iii) *The exaltation of protagonists and their motives coupled with the demonisation of opponents and their motives.*

(iv) *The derivation of a moral expedient from assumed consequences requiring the viewer to adopt a particular view and course of action in order to do "right" as opposed to "wrong."*

This is clearly a useful analysis.

Local educational authority to forbid the promotion of partisan views in the teaching of any subject in the school

12. Mr Downes submits that, if the film, which is sent to schools in order to facilitate its showing, is itself a partisan political film, one that *promotes partisan political views*, and if schools then make available such film to its teachers, and if teachers then show such film to their pupils, then inevitably there is the *promotion of partisan political views* in the teaching of any subject in the school, which is thus not only not being *forbidden* by the local education authority (and the DES), but being positively facilitated by them. Thus he submits, irrespective of any publication of guidance, the breach of the statute is, as he puts it, irremediable. I do not agree, and prefer the submissions of Mr Chamberlain. The statute cannot possibly mean that s406 is breached whenever a partisan political film is shown to pupils in school time. Mr Downes has to assert that there is, depending on the context, an exception that can be made in respect of the teaching of history, but I cannot see how, on his interpretation of the statute, any such exception can be carved out. It must be as much of a breach of the statute, on his construction, for the school or a teacher to show in a history class a film for example of Nazi or Leninist/Stalinist propaganda, or for that matter to make available such literature in documentary form, or to show a racist or an anti-racist film in a history or a citizenship class, as it is to show or distribute any other film or document which promotes partisan political views. Such an approach however construes the word "*promotion*" as if it meant nothing more than 'presentation'. What is forbidden by the statute is, as the side heading makes clear, "*political indoctrination*". If a teacher uses the platform of a classroom to *promote* partisan political views *in the teaching of* any subject, then that would offend against the statute. If on the other hand a teacher, in the course of a school day and as part of the syllabus, presents to his pupils, no doubt with the appropriate setting and with proper tuition and debate, a film or document which itself promotes in a partisan way some political view, that cannot possibly in my judgment be the mischief against which the statute was intended to protect pupils. It would not only lead to bland education, but to education which did not give the opportunity to pupils to learn about views with which they might, vehemently or otherwise, either agree or disagree. I conclude that the mere distribution by the Defendant to schools to facilitate their showing the film, and accompanied by guidance, to which I shall refer, is not per se, or irremediably, a promotion of those partisan political views.

Balanced Presentation

13. On the case for the Defendant, with which, as can be seen, I agree, the issue of whether there is facilitated by the DES what is forbidden, namely the *promotion* by the school of *partisan political views*, depends in substantial part on the context, and in this case on its Guidance Note. Such Guidance Note is also obviously relevant in relation to s407. On occasions during the hearing, Mr Chamberlain indicated that there were matters that could be left to the good sense and the knowledge of teachers, whether of science, geography or of citizenship. Trust in such teachers is of course, one hopes, always a given. However:
 - i) in this case it is the DES itself which is putting teachers all over the country into this position by, unusually, supplying a film to every state secondary school and, as indeed the Defendant itself has recognised by supplying the very Guidance Note, it becomes the more important to give assistance to those teachers.
 - ii) all the more so where even the science and geography teachers are unlikely to be wholly familiar with the detailed questions which underlie the film, or indeed with the full analysis of the present scientific approach to climate change which is in detail set out in the IPCC reports; not to speak of the teachers of citizenship, who are bound to take the scientific and geographical aspects of the film on trust.
14. Hence, consideration of whether there is a breach of s407 must also be given in the light of the Guidance Note. It became quickly clear in the course of the hearing that my judgment was, and indeed remains, that it is, not least in the circumstances above described, insufficient simply to supply in the pack a reference to the website, given that all teachers must be enabled to realise how important the Guidance Note is, but rather that it should be essential that the Guidance Note itself should be a constituent part of the pack. The Defendant, though contending that it had been sufficient to put the guidance on "Teachernet" (from which there had been substantial downloads of it since its publication), readily accepted that it could and would easily be distributed in hard copy if I considered this necessary, which I do. But there remains another respect in which Mr Downes relies on what he submits to be an insurmountable hurdle for the Defendant. He submits that, in order to comply with its duty under s407 to "*offer a balanced presentation of opposing views*", a school must give what he calls, by reference to the position in the media, "*equal air time*".
15. He submits that, if the political issues, as per the content of AIT, are to be *brought to the attention of pupils*, then there must be an equivalent and equal presentation of counter-balancing views. Mr Chamberlain submits that that is misconceived, that the statute cannot possibly prescribe in relation to every political issue or political view, howsoever well founded or well reasoned, that there must be an identical presentation of the converse. He suggests that the nearest analogy would be the duty of a trial judge in setting out the prosecution and defence case before a jury. There is a helpful discussion in this regard in **R v Nelson** [1997] Crim LR 234 in the judgment of the Court given by Simon Brown LJ, as he then was. The suggestion was that there had been a 'lack of balance' in the judge's summing up. After making it clear that a trial judge was entitled, if not obliged, not to rehearse the defence case blandly and uncritically in the summing up, Simon Brown LJ indicated that "*the truth usually is*

that the lack of balance is to be found in the weight and worth of the rival cases, an imbalance which the summing up, with perfect propriety, then fairly exposes".

16. There is nothing to prevent (to take an extreme case) there being a strong preference for a theory – if it were a political one – that the moon is not made out of green cheese, and hence a minimal, but dispassionate, reference to the alternative theory. The balanced approach does not involve equality. In my judgment, the word "*balanced*" in s407 means nothing more than fair and dispassionate.

The Film

17. I turn to AIT, the film. The following is clear:

- i) It is substantially founded upon scientific research and fact, albeit that the science is used, in the hands of a talented politician and communicator, to make a political statement and to support a political programme.
- ii) As Mr Chamberlain persuasively sets out at paragraph 11 of his skeleton:

"The Film advances four main scientific hypotheses, each of which is very well supported by research published in respected, peer-reviewed journals and accords with the latest conclusions of the IPCC:

(1) global average temperatures have been rising significantly over the past half century and are likely to continue to rise ("climate change");

(2) climate change is mainly attributable to man-made emissions of carbon dioxide, methane and nitrous oxide ("greenhouse gases");

(3) climate change will, if unchecked, have significant adverse effects on the world and its populations; and

(4) there are measures which individuals and governments can take which will help to reduce climate change or mitigate its effects."

These propositions, Mr Chamberlain submits (and I accept), are supported by a vast quantity of research published in peer-reviewed journals worldwide and by the great majority of the world's climate scientists. Ms Bramman explains, at paragraph 14 of her witness statement, that:

"The position is that the central scientific theme of Al Gore's Film is now accepted by the overwhelming majority of the world's scientific community. That consensus is reflected in the recent report of the IPCC. The role of the IPCC is to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its

potential impacts and options and adaptation and mitigation. Hundreds of experts from all over the world contribute to the preparation of IPCC reports, including the Working Group I report on Climate Change 2007: The physical Science basis of climate change, published on 2 February 2007 and the most recent Mitigation of Climate Change, the Summary for Policy-makers published by Working Group III on 4 May 2007. A copy of both documents are annexed to the Witness Statement of Dr Peter Stott. The weight of scientific evidence set out by the IPCC confirms that most of the global average warming over the last 50 years is now regarded as "very likely" to be attributable to man-made greenhouse gas emissions."

For the purposes of this hearing Mr Downes was prepared to accept that the IPCC Fourth Assessment Report represented the present scientific consensus.

iii) There are errors and omissions in the film, to which I shall refer, and respects in which the film, while purporting to set out the mainstream view (and to belittle opposing views), does in fact itself depart from that mainstream, in the sense of the "consensus" expressed in the IPCC reports.

18. Mr Chamberlain persuasively pointed out in his skeleton (at paragraph 7(c)):

"Scientific hypotheses (such as the hypothesis that climate change is mainly attributable to man-made emissions of greenhouse gases) do not themselves constitute "political views" within the meaning of s407, even if they are doubted by particular political groups. But, in any event, nothing in the 1996 Act (or elsewhere) obliged teachers to adopt a position of studied neutrality between, on the one hand, scientific views which reflect the great majority of world scientific opinion and, on the other, a minority view held by a few dissentient scientists."

19. Of course that is right, and ss406 and 407 are not concerned with scientific disputes or with the approach of teachers to them. However, as will be seen, some of the errors, or departures from the mainstream, by Mr Gore in AIT in the course of his dynamic exposition, do arise in the context of alarmism and exaggeration in support of his political thesis. It is in that context that the Defendant, in actively distributing the film to all schools, may need to make clear that:

i) some or all of those matters are not supported/*promoted* by the Defendant [s406].

ii) there is a view to the contrary, i.e. (at least) the mainstream view [s407].

20. Mr Chamberlain also rightly points out, at paragraph 7(a) of his skeleton that:

"The Film is intended to be used by qualified teachers, not as a substitute for, but as a supplement to, other teaching methods

and materials. The original Guidance, prepared by a panel of experienced educationalists, identified those parts of the Film's scientific presentation where further context or qualification was required and provided it, with suitable references and links to other reputable sources of information. It encouraged teachers to use the Film as a vehicle for the development of analytic and critical skills. It did not attempt to hide the fact that some scientists do not agree with the mainstream view of climate change and even made reference to The Great Global Warming Swindle (together with a website containing a critique of it)."

21. However, for those same two reasons set out in paragraph 19 above, the teachers must at least be put into a position to appreciate when there are or may be material errors of fact, which they may well not, save for the most informed science teachers.

22. I have no doubt that Dr Stott, the Defendant's expert, is right when he says that:

"Al Gore's presentation of the causes and likely effects of climate change in the film was broadly accurate."

Mr Downes does not agree with this, but to some extent this is because the views of the Claimant's expert, Professor Carter, do not accord with those of Dr Stott, and indeed are said by Dr Stott in certain respects not to accord with the IPCC report. But Mr Downes sensibly limited his submissions to concentrate on those areas where, as he submitted, even on Dr Stott's case there are errors or deviations from the mainstream by Mr Gore. Mr Downes produced a long schedule of such alleged errors or exaggerations and waxed lyrical in that regard. It was obviously helpful for me to look at the film with his critique in hand.

23. In the event I was persuaded that only some of them were sufficiently persuasive to be relevant for the purposes of his argument, and it was those matters – 9 in all – upon which I invited Mr Chamberlain to concentrate. It was essential to appreciate that the hearing before me did not relate to an analysis of the scientific questions, but to an assessment of whether the 'errors' in question, set out in the context of a political film, informed the argument on ss406 and 407. All these 9 'errors' that I now address are not put in the context of the evidence of Professor Carter and the Claimant's case, but by reference to the IPCC report and the evidence of Dr Stott.

The 'Errors'

1. 'Error' 11: Sea level rise of up to 20 feet (7 metres) will be caused by melting of either West Antarctica or Greenland in the near future.

24. In scene 21 (the film is carved up for teaching purposes into 32 scenes), in one of the most graphic parts of the film Mr Gore says as follows:

"If Greenland broke up and melted, or if half of Greenland and half of West Antarctica broke up and melted, this is what would happen to the sea level in Florida. This is what would happen in the San Francisco Bay. A lot of people live in these areas."

The Netherlands, the Low Countries: absolutely devastation. The area around Beijing is home to tens of millions of people. Even worse, in the area around Shanghai, there are 40 million people. Worse still, Calcutta, and to the east Bangladesh, the area covered includes 50 million people. Think of the impact of a couple of hundred thousand refugees when they are displaced by an environmental event and then imagine the impact of a 100 million or more. Here is Manhattan. This is the World Trade Center memorial site. After the horrible events of 9/11 we said never again. This is what would happen to Manhattan. They can measure this precisely, just as scientists could predict precisely how much water would breach the levee in New Orleans."

25. This is distinctly alarmist, and part of Mr Gore's 'wake-up call'. It is common ground that if indeed Greenland melted, it would release this amount of water, but only after, and over, millennia, so that the Armageddon scenario he predicts, insofar as it suggests that sea level rises of 7 metres might occur in the immediate future, is not in line with the scientific consensus.

2. 'Error' 12: Low lying inhabited Pacific atolls are being inundated because of anthropogenic global warming.

26. In scene 20, Mr Gore states "*that's why the citizens of these Pacific nations have all had to evacuate to New Zealand*". There is no evidence of any such evacuation having yet happened.

3. 'Error' 18: Shutting down of the "Ocean Conveyor".

27. In scene 17 he says, "*One of the ones they are most worried about where they have spent a lot of time studying the problem is the North Atlantic, where the Gulf Stream comes up and meets the cold wind coming off the Arctic over Greenland and evaporates the heat out of the Gulf Stream and the stream is carried over to western Europe by the prevailing winds and the earth's rotation ... they call it the Ocean Conveyor ... At the end of the last ice age ... that pump shut off and the heat transfer stopped and Europe went back into an ice age for another 900 or 1000 years. Of course that's not going to happen again, because glaciers of North America are not there. Is there any big chunk of ice anywhere near there? Oh yeah [pointing at Greenland]*". According to the IPCC, it is very unlikely that the Ocean Conveyor (known technically as the Meridional Overturning Circulation or thermohaline circulation) will shut down in the future, though it is considered likely that thermohaline circulation may slow down.

4. 'Error' 3: Direct coincidence between rise in CO₂ in the atmosphere and in temperature, by reference to two graphs.

28. In scenes 8 and 9, Mr Gore shows two graphs relating to a period of 650,000 years, one showing rise in CO₂ and one showing rise in temperature, and asserts (by ridiculing the opposite view) that they show an exact fit. Although there is general scientific agreement that there is a connection, the two graphs do not establish what Mr Gore asserts.

5. 'Error' 14: The snows of Kilimanjaro.

29. Mr Gore asserts in scene 7 that the disappearance of snow on Mt Kilimanjaro is expressly attributable to global warming. It is noteworthy that this is a point that specifically impressed Mr Milliband (see the press release quoted at paragraph 6 above). However, it is common ground that, the scientific consensus is that it cannot be established that the recession of snows on Mt Kilimanjaro is mainly attributable to human-induced climate change.

6. 'Error' 16: Lake Chad etc

30. The drying up of Lake Chad is used as a prime example of a catastrophic result of global warming. However, it is generally accepted that the evidence remains insufficient to establish such an attribution. It is apparently considered to be far more likely to result from other factors, such as population increase and over-grazing, and regional climate variability.

7. 'Error' 8: Hurricane Katrina.

31. In scene 12 Hurricane Katrina and the consequent devastation in New Orleans is ascribed to global warming. It is common ground that there is insufficient evidence to show that.

8. 'Error' 15: Death of polar bears.

32. In scene 16, by reference to a dramatic graphic of a polar bear desperately swimming through the water looking for ice, Mr Gore says: "*A new scientific study shows that for the first time they are finding polar bears that have actually drowned swimming long distances up to 60 miles to find the ice. They did not find that before.*" The only scientific study that either side before me can find is one which indicates that four polar bears have recently been found drowned because of a storm. That is not to say that there may not in the future be drowning-related deaths of polar bears if the trend of regression of pack-ice and/or longer open water continues, but it plainly does not support Mr Gore's description.

9. 'Error' 13: Coral reefs.

33. In scene 19, Mr Gore says: "*Coral reefs all over the world because of global warming and other factors are bleaching and they end up like this. All the fish species that depend on the coral reef are also in jeopardy as a result. Overall specie loss is now occurring at a rate 1000 times greater than the natural background rate.*" The actual scientific view, as recorded in the IPCC report, is that, if the temperature were to rise by 1-3 degrees Centigrade, there would be increased coral bleaching and widespread coral mortality, unless corals could adopt or acclimatise, but that separating the impacts of climate change-related stresses from other stresses, such as over-fishing and polluting, is difficult.

The Guidance

34. As set out in paragraph 14 above, I am satisfied that, in order to establish and confirm that the purpose of sending the films to schools is not so as to "*influence the opinions*

of children" (paragraph 7 above) but so as to "stimulate children into discussing climate change and global warming in school classes" (paragraph 6 above) a Guidance Note must be incorporated into the pack, and that it is not sufficient simply to have the facility to cross-refer to it on an educational website. The format of the Guidance Note put on the website is helpful, in splitting up consideration by reference to the three different categories of teachers who may make use of the film, those teaching science, geography and citizenship, and to include a chart, by reference to the various scenes of the film, which both includes descriptive passages and raises questions for potential discussion. I have no doubt that some teachers of science or geography will have a much broader knowledge of the subject than is simply contained in the film and in the existing Guidance Note, and will be in a position to assist in the stimulation of such discussion. However, as set out in paragraph 13 above, that is plainly not so for the majority of teachers. In any event it is important that, in such guidance, any serious apparent errors should be identified, not only so as to encourage informed discussion, but also so that it should not appear that the Defendant, and, as a result of the Defendant sending the film to schools, schools, are *promoting partisan views* by giving their imprimatur to it. That is not to say of course that there needs to be comment on every single aspect in the film in the Guidance Note nor discussion of every scientific dispute. However, it is noteworthy that in the (unamended) Guidance Note there is no or no adequate discussion at all, either by way of description or by way of raising relevant questions for discussion, in relation to any of the above 9 'errors', the first two of which are at any rate apparently based on non-existent or misunderstood evidence, and the balance of which are or may be based upon lack of knowledge or appreciation of the scientific position, and all of which are significant planks in Mr Gores's 'political' argumentation.

35. The introduction to the Guidance Note, as it stands, indicated that "*the pack seeks to help teachers to engage pupils with ... questions, discuss the facts and test the science*". But the absence of comment about and correction of the 'errors' detracts from that prospect. Attention was drawn to ss406 and 407, but that simple reference to the statutory provisions would not, without identifying the problematic areas, enable the teachers to identify, as they were encouraged to do:

"Areas where there is undisputed scientific consensus ...

Areas where there is a strong scientific consensus but where a small minority of scientists do not agree ...

Areas where there is political debate."

36. The lack of addressing of the 'errors' in the existing Guidance Note was exacerbated, as Mr Downes submitted, by other passages in it:

- i) In a discussion of the relationship between carbon dioxide and rising temperature, a question was raised for "*possible teaching activities*" namely: "*Is CO₂ the cause of rising temperatures or is rising CO₂ caused by rising temperatures? Sceptics say we don't know – what is the explanation in AIT?*" Plainly this is unsatisfactory, since it is common ground that the explanation in AIT is at best materially incomplete (see the fourth 'error' above).

- ii) In the part of the Guidance Note which relates to discussion in citizenship classes, teachers are encouraged to raise the questions:

"Consider the reason why politicians may have wanted to ignore climate change? ...

What pressures can be put on politicians to respond to climate change?"

- iii) In the suggested planning of a whole day event on climate change for citizenship classes, there is no suggestion at all of the discussion of opposing views to that of Mr Gore, and the list of "*Suggested Organisations for the Climate Change Fair and as Guest Speakers*" is limited to organisations which support his views.

37. As a result of considerable discussion in Court, which I, and both Counsel, strained to avoid becoming a drafting session, a new Guidance Note has now been produced which the Defendant proposes to include in the pack, and which, to my satisfaction, addresses all of the above 9 'errors', both by drawing specific attention to where Mr Gore may be in error and/or in any event where he deviates from the consensus view as set out in the IPCC report, and by, where appropriate, raising specific questions for discussions. I need only refer, by way of example, to the insertion in respect of scene 21, of the following passage relating to the first 'error', with regard to sea level rise:

"Note: Pupils might get the impression that sea-level rises of up to 7m (caused by the complete melting of Greenland or half of Greenland and half of the West Antarctic shelf) could happen in the next decades. The IPCC predicts that it would take millennia for rises of that magnitude to occur. However, pupils should be aware that even small rises in sea level are predicted to have very serious effects. The IPCC says that "many millions more people are projected to be flooded every year due to sea-level rise by the 2080s" (i.e. within pupils' own lifetimes)."

References are helpfully now given to the IPCC report.

38. It may also be interesting to note what the Defendant has inserted in relation to the second of the above 'errors', with regard to the evacuation to New Zealand:

"Note: It is not clear what "Pacific nations" Gore is referring to in the section dealing with evacuations to New Zealand. It is not clear that there is any evidence of evacuations in the Pacific due to human-induced climate change. Teaching staff may wish to use this as an example of the need in scientific presentation to give proper references for evidence used. However, the IPCC does predict that for small islands sea level rises will exacerbate storm surges and other coastal hazards and that, by the middle of this century, climate change will reduce water resources to the point where they become insufficient to meet demands in low-rainfall periods."

39. As for the particular matters in the original Guidance Note set out in paragraph 36 above:

- i) With regard to the first example, the last question "*What is the explanation in AIT?*" is now to be replaced by "*What does the IPCC say?*"
- ii) The discussion topics so far as concerns citizenship are altered. The first question has now become:

"Consider the reasons why politicians may have chosen not to act on climate change?"

Significantly the reference to 'putting pressures on politicians' is removed.

- iii) The reference to the suggested organisations is to be changed and balanced.

One particular change in the section on "*Citizenship: Planning a whole day event on climate change*" is of some significance:

*"Invite in a guest speaker to go over the issues raised across the day and discuss solutions ... But please remember that teaching staff must **not** promote any particular political response to climate change and, when such potential responses are brought to the attention of pupils, must try to ensure that pupils are offered a balanced presentation of opposing views."*

40. The amended Guidance Note contains in its introduction a new and significant passage:

"[Schools] must bear in mind the following points

- *AIT promotes partisan political views (that is to say, one sided views about political issues)*
- *teaching staff must be careful to ensure that they do not themselves promote those views;*
- *in order to make sure of that, they should take care to help pupils examine the scientific evidence critically (rather than simply accepting what is said at face value) and to point out where Gore's view may be inaccurate or departs from that of mainstream scientific opinion;*
- *where the film suggests that views should take particular action at the political level (e.g. to lobby their democratic representatives to vote for measures to cut carbon emissions), teaching staff must be careful to offer pupils a balanced presentation of opposing views and not to promote either the view expressed in the film or any other particular view.*

The sceptical view

Teaching staff will be aware that a minority of scientists disagree with the central thesis that climate change over the past half-century is mainly attributable to man-made greenhouse gases. However, the High Court has made clear the law does not require teaching staff to adopt a position of neutrality between views which accord with the great majority of scientific opinion and those which do not [this was anticipatory of my decision].

The notes set out in this guidance have been drafted in accordance with the Fourth Assessment Reports of the [IPCC], published in 2007 under the auspices of the United Nations and the World Meteorological Organisation. AIT was made before these latest reports had been published, but it is important that pupils should have access to the latest and most authoritative scientific information. The IPCC derives its credibility from the fact that its conclusions are drawn from a "meta-review" of a massive number of independently peer-reviewed journal articles, and from the expertise and diversity of those on the reviewing panels."

This is in my judgment necessary and judicious guidance.

41. There were four other 2-minute "Climate Change" films in the pack, about two of which Mr Downes made complaint, but I am satisfied that they gave rise to no separate complaint of breach of s406 or s407 and that their continued inclusion in the pack is of no materiality.
42. There are two fundamental questions for me to answer:
 - i) Whether, by dispatching the film, with the cross-reference in the pack to the Guidance Note, as it then stood on the website, the Defendant was not taking steps to *forbid* but rather itself *promoting partisan political views*.
 - ii) Whether, by distributing/not withdrawing the film but accompanying it by a hard copy of the Guidance Note, amended in accordance with what has been fully discussed during the hearing and referred to in my judgment, the Defendant is now complying with ss406 and 407.
43. The Defendant does not intend now to continue with the old position, but has already amended the Guidance Note on the website, and stands ready to distribute it in hard copy if my judgment permits. There is no longer therefore any need for relief in respect of the film otherwise than as accompanied by the present Guidance Note. Mr Chamberlain submits that, even without the changes, the Defendant was not in breach of ss406 or 407. Mr Downes submits, as set out in paragraph 12 above, that the breach of s406 is irremediable, by virtue of the simple sending to schools of the film, irrespective of any accompanying Guidance Note, and in any event does not accept that the amendments to the Guidance Note are sufficient to comply with any palliative under s406 or duty under s407.

44. I am satisfied that, with the Guidance Note, as amended, the Defendant is setting the film into a context in which it can be shown by teachers, and not so that the Defendant itself or the schools are *promoting partisan views* contained in the film, and is putting it into a context in which a balanced presentation of opposing views can and will be offered. There is no call for the Defendant to support the more extreme views of Mr Gore – indeed the Government's adherence is to the IPCC views - but the present package in my judgment does enough to make it clear both what the mainstream view is, insofar as Mr Gore departs from it, and that there are views of "sceptics" who do not accept even the consensus views of the IPCC. The Defendant will not be *promoting partisan political views* by enabling the showing of AIT in the context of the discussions facilitated by the Guidance Note, and is not under a duty to *forbid* the presentation of it in that context.
45. As for the position prior to the hearing and the changes in the Guidance Note, as I have indicated, it is not necessary for me to grant any relief in relation to it, but I must express a conclusion about it. It is plain that the original press releases of February were enthusiastically supportive of the film, and did initially indicate an intent to "*influence*". However there is no mention at that stage of any accompanying Guidance Note. When the film was actually sent out, it was accompanied by the reference to the website where the Guidance could be found, and to that extent some discussion was facilitated. However the Guidance had the flaws to which I have referred in paragraphs 34 to 36 above. As Mr Downes has pointed out, if it has taken this hearing to identify and correct the flaws, it is impossible to think that teachers could have done so untutored. I am satisfied that, because insufficient attempt was made to counter the more one-sided views of Mr Gore, and, to some extent, by silence in the Guidance Note, those views were adopted, or at any rate discussion of them was not facilitated (and no adequate warning was given), there would have been a breach of ss406 and 407 of the Act but for the bringing of these proceedings and the conclusion that has now eventuated. Indeed the spirit of co-operation in which this hearing has been carried through is a tribute to constructive litigation.
46. In the circumstances, and for those reasons, in the light of the changes to the Guidance Note which the Defendant has agreed to make, and has indeed already made, and upon the Defendant's agreeing to send such amended Guidance Note out in hard copy, no order is made on this application, save in relation to costs, on which I shall hear Counsel.