TO: Officers & Council, Section of Antitrust Law

FROM: Jonathan M. Jacobson, Publications Officer

RE: Author Attribution Policy and Practices for Section Publications

For many of our publications, the author is the Section of Antitrust Law, rather than any specific individual. The Section necessarily depends, however, on the contributions of individuals to draft, edit, review, and publish its various works. Individual contributors deserve – and receive – credit from the Section for their efforts. Unfortunately, the manner in which credit is given to individuals for their efforts varies more than it should and is perceived by some as arbitrary. The purpose of this memorandum is to summarize prior policy and practice, articulate some of the criticisms that have been advanced, as well as the supporting rationales, and to state the revised policy for Section practice going forward.

Prior Stated Policy

The Section’s current official policy on attribution is spelled out in the Books & Treatises Committee’s “How-To” Guide:

The manner in which “credit” should be provided to editors and drafters is an issue that arises frequently. The underlying principle is that the Section, not individual lawyers or economists (or their firms), is the credited “author” of each Section publication. It also is important, however, that the hard work of every contributor be acknowledged, both because it is the right thing to do and because it is important as an incentive to attract contributors.

Each Section publication includes a Foreword by the Section Chair that expresses the Section’s gratitude for the contributions of the Project Chairs and any others primarily responsible for the work. The Foreword is followed by a Preface, typically drafted by the Chair of the Sponsoring Committee (or, in some cases, by the Project Chair). The Preface lists each contributor by name and briefly explains the nature of the contributions to the Publication. Firm affiliations are not mentioned. However, where staff at a particular firm has made a unique contribution, acknowledgement is
appropriate. For example: “The Section thanks the Word Processing Department of XYZ firm for their dedication and effort in [this book].” Absent a showing of unusual circumstances and approval from the Council or Publications Officer, Section publications never have textual or footnoted statements in the body of the work indicating the author of a particular chapter. The Preface may express thanks to a particular individual for her unique contribution. The Section has a long-standing policy against bylines and attribution in its books, and the B&T Committee is not authorized to deviate from this policy.

SECTION OF ANTITRUST LAW, BOOKS & TREATISES COMMITTEE, A HOW-TO-GUIDE FOR ANTITRUST SECTION PUBLICATIONS ¶ G, at 4-5 (rev. ed. 2007).

Actual Practice

In practice, the Section’s formal policy is demonstrably adhered to in some cases, but in other instances variations have emerged that are hard to reconcile with the policy, even giving due regard to the policy’s allowance of exceptions in appropriate cases. There are any number of variants, but they can be categorized largely as follows:

- **Publications following the official policy.** Most handbooks continue to follow the official policy. Recent examples include Interlocking Directorates, Category Management, Proof of Conspiracy Under Federal Antitrust Laws, and the Antitrust Class Actions Handbook, all published in 2010 or 2011.
- **Standard treatise and monograph practice.** ALD, the Annual Review, and our monographs list the editorial chair and editorial board members on the title page. Other contributors are listed in the preface.
- **Indirect acknowledgement in preface.** Some books contain acknowledgments in the form of special thanks for individuals’ “contributions” to specific chapters, indicating in an indirect fashion the individuals primarily responsible for drafting specific portions of a book. Examples include Econometrics (2005) and Antitrust Law and the Economics of Product Distribution (2006). There is a different, lesser, degree of indirect attribution in the Pharmaceutical Industry Antitrust Handbook (2009), where the preface lists, under specific headings, the authors and editors, but without chapter attribution.
- **More specific acknowledgment in preface or foreword.** Some works indicate individual chapter or section authors specifically in the preface or the foreword. For example, the foreword to CLOUS specifies the authors for each country’s chapter; the preface to Antitrust Compliance (2d ed. 2010) contains a bullet point list of the “essays” in the book by title and individual author; the foreword to Consumer Protection Law Developments (2009) acknowledges the author of one chapter in addition to the more standard form of attribution credit.
- **Specific chapter author acknowledgment.** For the three-volume treatise, State Antitrust Practice and Statutes (4th ed. 2009), the first page of each chapter identifies by whom it was prepared and reviewed. Somewhat similarly, a monograph, Federal Statutory Exemptions from Antitrust Law (2007), credits “two principal authors” for writing the text.
Criticisms

For those publications for which the Section is the author, there have been a number of criticisms that the Section’s policy has been applied inconsistently with the result that insufficient credit has been given in some cases. The issue is not that the Section does not provide adequate opportunities for credited expression. Authors can publish acknowledged, bylined works in ALJ, the Magazine, the Source, and committee newsletters. In addition, several of our larger scale publications (such as Competition as Public Policy (2010) and Issues in Competition Law and Policy (2008)) are collections of individually-credited works. Rather, the problem is that, in works such as our standard handbooks, some of our hardest-working key contributors will have devoted hundreds of hours and yet received nothing more than a bare mention in a preface or forward - indistinguishable from the listing of many other lesser contributors - so that many readers will skim lightly over their name without recognizing their true contribution.

That our policy on attribution is not consistently adhered to is self-evident. The question whether variations from the stated policy are allowed pursuant to rational criteria systematically applied in order to provide enhanced credit in exceptional circumstances is much less clear.

The most vocal critics of our policy and the persistent advocates for more attribution credit tend to be academics and economists. Economists uniformly believe that our policy is much too restrictive. Several of us have witnessed economists drop out of projects as a result of the attribution issue. The effort to produce a second edition of Econometrics has been somewhat constrained, and the first edition’s restrictive crediting process has led some economists to decline to contribute to future Section book projects.

Criticism from academics is a bit different and somewhat less uniform, but is generally consistent with the economists’ core concern. Some academics have attempted to ameliorate the anonymity problem posed by the Section’s strict attribution policy via “self-help” additions to their CV’s when the Section will provide a substantiating letter supporting their contribution claim. A typical academic comment is the following: “I would be reluctant to list on my CV some publication where my role wasn’t recognized in the publication. If I’m the principal drafter of a chapter, such that I can list the chapter on my CV and add ‘(principal drafter),’ I’d want something in the book, at least in the acknowledgments, confirming that fact.” Most academics expressed that or a similar view.

One way in which the concerns of academics and economists have been addressed in the past is for the Publications Officer or a B&T co-chair to provide a letter to the university (or similar body) specifying the contribution of the individual in question. Academics advise that this type of indirect credit is “better than nothing,” but not much better. It is not viewed by them as a fully satisfactory substitute for direct credit in the publication itself.
Responses/Defense

Notwithstanding these criticisms, there remain significant justifications for the current policy. Most importantly, the Section’s reputation for objectivity and neutrality is enhanced by preserving the notion that no publication emerges from the Section’s consensus process and rigorous review procedures as the work of a single individual or firm. Rather, all Section publications must earn the imprimatur of the institution itself and thereby assure readers that neither editorial control nor substantive viewpoint has been ceded to any individual or firm.

In addition, although the Section’s policy may have led to some decreased involvement by academics and economists in non-bylined publications, there is little evidence to date suggesting that the policy has led to decreased production of books in terms of quantity or quality. Accordingly, adherence to existing policy would not likely have any dramatic impact on the production of Section publications, at least for the foreseeable future.

The one aspect of current practices that seems indefensible is the lack of consistency in application of our criteria permitting variances. The lack of consistency, in turn, makes the policy’s substantive content more difficult to defend.

New Policy

Our conclusion is no dramatic change to the Section’s attribution policy is warranted. However, some incremental changes to implementation practices are necessary to reduce the level of inconsistency and to accommodate where possible the special needs of academics and economists so as to provide the Section with a larger pool of qualified contributors. The revised practices recognize that there are three categories of Section-authored publications, with each having its own distinct application of the attribution policy. Consistency would be maintained by applying the attribution policy within each category uniformly.

1. **ALD, the Annual Review, CPLD, and the CPLD Bi-Annual Update.** For ALD and the Annual Review, current practice will be maintained without change. The Editorial Chair and board members will be listed on the title page. Contributors will continue to be listed in the Preface. There will be no other attribution credit. Firm affiliations will still not be mentioned.

2. **CLOURS, State Antitrust, and Monographs.** The Editorial Chair and board members will be listed on the title page, as with current practice. “Primary” authors of specific chapters will be acknowledged as such in the preface if their contributions so warrant in the judgment of the Editorial Chair and Publications Officer. These acknowledgments should generally be in the form of bulleted lists. Again, firm affiliations will not be mentioned.

3. **Handbooks.** The Preface will continue to list each contributor by name and explain briefly the nature of the contributions to the Publication. Firm affiliations will still not be mentioned. If appropriate in the judgment of the Project Chair and Publication Officer, the preface may acknowledge that a particular individual was the principal author of a
chapter or section of a handbook. In addition, if appropriate in the judgment of the Publications Officer, the name(s) of the project chair(s) will be listed on the title page.

Note that, where staff at a particular firm has made a unique contribution to any Section work, acknowledgement of the staff (and the firm) will continue to be appropriate. (For example: “The Section thanks the Word Processing Department of XYZ firm for their dedication and effort in [this book].”)

J.M.J.