

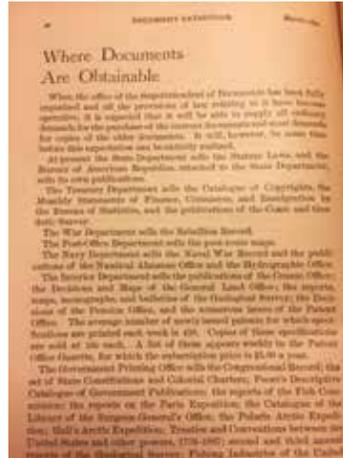
# “Issued for Gratuitous Distribution”: The History of Fugitive Documents and the FDLP

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*“A popular government without popular information, or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both.” — James Madison*

The head of each executive department, independent agency and establishment of the Government shall deliver to [the Director of the Government Publishing Office] a copy of every document issued or published by the department, bureau, or office not confidential in character. — 44 U.S. Code § 1710 <https://www.law.cornell.edu/uscode/text/44/1710>

Government publications ... shall be made available to depository libraries through the facilities of the Superintendent of Documents for public information. Each component of the Government shall furnish the Superintendent of Documents a list of such publications it issued during the previous month, that were obtained from sources other than the Government Publishing Office. — 44 U.S. Code § 1902 <https://www.law.cornell.edu/uscode/text/44/1902>



**Monthly Catalog (MoCat),** March, 1895: [http://freegovinfo.info/wp-content/uploads/2017/09/Mocat-1895\\_00003-cropped.jpg](http://freegovinfo.info/wp-content/uploads/2017/09/Mocat-1895_00003-cropped.jpg)

The U.S. government is the largest publisher in the world. Everyone quotes James Madison — or misquotes him for good cause! — in philosophizing about and arguing for free public access to government information. In fact, this is one of the foundations on which is built the **Federal Depository Library Program (FDLP)**. The **FDLP** has been in place in one form or another since 1813 when the **U.S. Congress** found it necessary and expedient to enlist libraries to the cause of public access to public information by and about the U.S. government. And for almost five decades, this system of public access to privately published documents stayed intact.

The **Government Publishing Office (GPO)**, then known as the *Government Printing Office*, began operations on March 4, 1861 because of the inherent problems, varying quality, and increasing expense of relying on private publishers for public information.<sup>2</sup> The *Printing Act of 1895* sought to tighten control of the expanding world of government publishing. The *Depository Library Act of 1962* created regional depository libraries,<sup>3</sup> and further addressed access to federal records and publications, and the roles of the **National Archives and Records Administration (NARA)** and **GPO**. During the **Reagan** years, the 1980 *Paperwork Reduction Act* and *Office of Management and Budget (OMB) Circular A-130* threw two monkey wrenches into the works, allowing the chaos of disparate executive agency printing practices from the early 20th century to come to the fore once again, though later editions of A-130 included assurances that government publications were to be made available to depository libraries.<sup>4</sup> Throughout this historical arc, the issue of “fugitive” or “lost” documents has been a problem large enough to cause consternation among librarians, and the public, when their access was curtailed by the issue but not politically hot enough — or sometimes *too* politically hot! — to cause the federal government to act to rectify the situation.

The **FDLP** has generally worked well for printed material for over two hundred years because it consists of a relatively simple collaborative process: 1) **GPO** receives tangle documents from federal government

entities; 2) it catalogs, indexes, prints, and distributes or “deposits” them in libraries; and 3) libraries receive documents and provide access and services for the public. Even though nearly all government information disseminated today is born-digital, the acts of collecting, describing, giving access to, and preserving documents remain critical.

The scope of the **FDLP** consists of a large swath of published materials from all three branches of government, including publications from the 440-some-odd executive agencies and commissions, Congressional bills, committee hearings, committee prints, House and Senate documents and reports, and the publications, reports, and opinions of the federal courts. **GPO** states that the scope of the **FDLP** includes “publications having public interest or educational value.” The scope rules exclude publications classified for reasons of national security, and publications issued for strictly administrative or operational purposes which have no public interest or educational value.<sup>5</sup>

“Fugitive documents” are those publications that are *supposed to be* within the scope of the **FDLP** but were not distributed to libraries by **GPO**. Almost from the beginning, the issue of fugitive documents has been a fact of life for depository libraries. While government information librarians tend to think of fugitives as random documents that have mistakenly fallen through **GPO**’s cataloging and indexing or distribution nets, the reality is not as clear-cut as that. It may come as a surprise to some, but **GPO** has never had a monopoly on government printing, despite the agency’s authority under Title 44. There are whole classes of fugitives that were not distributed to **FDLP** libraries by **GPO**, though some have made their way into libraries despite this, usually at much cost and staff time. These include:

**BLOCKED** documents like **Congressional Research Service (CRS)** reports that the **Library of Congress** presents as “privileged communication” between **Congress** and **CRS**, though they are a regular and unclassified part of the legislative process. Since 1916, these reports have been sold to libraries in bulk by **University Publications of America (UPA)**, then **LexisNexis**, and now **ProQuest** as well as individually by publishers like **Penny Hill Press**. They are also “leaked” online and collected together by aggregators such as *everyCRSreport.com* and **Stanford University Library** ([archive-it.org/collections/1078](http://archive-it.org/collections/1078)).

**SPECIALIZED** formats like maps, aerial photos, and nautical and aeronautical charts. Many of these 19th and early 20th century materials, especially from local or regional offices, were only regularly distributed to **FDLP** libraries following WWII. Many libraries collect these materials only for their specific area or region.

**COMMODITIZED** documents like the 2.4 million technical reports from the **National Technical Information Service (NTIS)** sold by the legislatively-required cost-recovery unit of the Department of Commerce. Another example is the incredibly valuable **Joint Publications Research Service (JPRS) Non-Depository Collection**, which includes technical reports collected and translated from Communist countries, at the rate of approximately 12,000 per year from 1953-1980. This collection was reproduced in microprint format and sold to libraries by **Readex**. And perhaps most famously, there are the “**DUPLICATED**”<sup>6</sup> (or **DECENTRALIZED**<sup>7</sup>) documents, the executive branch publications that agencies decided to print or procure on their own rather than through contract printing with **GPO**. Many libraries purchased a collection known as *Executive Branch Documents 1789-1932* from **Congressional Information Service (CIS)** (later acquired by **LexisNexis** and then **ProQuest**) because of

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the loosely enforced and often ignored printing regulations. This last class of fugitives constitutes the massive number of reports, documents, data sets, and other executive agency materials that are now published on agency websites and sometimes reported by librarians to GPO.<sup>8</sup>

**John Walters**, in two well-researched and fascinating articles in *Journal of Government Information* helpfully mapped out the landscape of 19th and 20th century printing.<sup>9</sup> Since at least 1836, the **House of Representatives** has each session published in a document entitled *Reports to be Made to Congress*, listing the reports required by various laws that they expect to receive from departments and agencies. Historically, departments have sent some, but not all, of their publications to GPO for printing. This included both congressionally mandated reports as well as administratively necessary ones. Some complained that GPO could not print their publications economically, efficiently, or promptly, while others were irked by Congressional “censorship” attempts to limit public awareness of Presidential policy initiatives deemed unfavorable to the opposing political party. The policies of the **Congressional Joint Committee on Printing (JCP)** and, after 1970, the **Office of Management and Budget (OMB)** have both played roles in this ongoing problem, with the loss or lack of bibliographic control and concomitant loss of public access being the outcome of long-standing contention and political jockeying between political parties and the executive and legislative branches for administrative control and autonomy.

By the late 19th century, executive departments and agencies had begun to acquire their own “toy” offset printing presses, as professional printers called them. The Printing Investigation Commission of 1910 counted 232 offset presses in all government establishments, including the field service. This had risen to 486 offset presses in the DC area by 1920. Departments were printing ephemera, circulars, and form letters, along with series, periodicals, and reports. Early 20th century *Monthly Catalogs* are littered with notes of specific agencies “gratuitously” sending documents to “those who apply for them.” In the digital era, some of these reports are not produced at all, or are sent to Congress but then lost in the void, and never captured or described by GPO for the FDLP.<sup>10</sup>

The actual number of fugitives is elusive. But we can make some back-of-the-napkin estimates. The print “national collection” is estimated to be in the neighborhood of 3 million items.<sup>11</sup> The number of fugitives has been variously estimated by GPO at between 50%<sup>12</sup> and 85%,<sup>13</sup> depending on the agency and era. And, among the findings in a notable 1989 study published in *Documents to the People (DttP)*, **Cynthia Bower** found that 43% of documents indexed in the *American Statistics Index* were fugitives and that EPA publications became less and less likely to be listed in the *Monthly Catalog* over time.<sup>14</sup> That puts the number of historic, paper-based fugitives at between one and five million items! Even if one were to figure in the fugitives sold by commercial publishers, or those distributed through services like the **Library of Congress Document Expediting Project (DocEx)**, which sent duplicate copies of government publications received from federal agencies to libraries around the world from 1946 to 2004, or other documents that made it into library collections through the dogged work of individual librarians, that’s still a sizeable number of documents that are not in FDLP libraries, and not in the *Monthly Catalog* and either its antecedents or its online successor, the **Catalog of Government Publications (CGP)**.

To get an idea of the scale of the fugitives issue in the born-digital era, one need only compare the numbers. In 2012, GPO distributed 10,200 items to FDLP libraries, but the 2012 End of Term Crawl gathered 32,837,215 URLs.<sup>15</sup> Even if only 1/100 of those 32,837,215 URLs are actual documents, that would still be something like 300,000 documents across the .gov domain, thirty times the number of distributed documents, the overwhelming number of which are fugitive. The sheer scale of digital government information is immense! Today there is more born-digital government information produced in a single year than all the paper-and-ink publications accumulated in the FDLP over the last two hundred years of the program.

All information published by our government is critical for academics, students, and members of the public who seek to understand the workings of government, the intricacies of public and foreign policy, the outcomes of scientific research, and important historical moments. Librarians may see access to government publications as an inherent public good but the reality proves slightly hazier than that. Printing of government information is a political act that has always faced the ebbs and flows of political discord. When the use of a single phrase like “climate change” can be restricted due to political agendas, how can printing of public information not be contentious? Creating and maintaining a complete historical and bibliographic record of the workings of government is a deeply important goal which libraries and librarians have long worked to achieve.

Librarians have always had to advocate for workflows, law, policy, and funding to patch a leaky government information distribution system. FDLP libraries have had to rely on commercial publishers, spending many millions of dollars on documents that *should have been* distributed to libraries for free. And with the exponentially expanding scale of born-digital government information — and the incredible ease of online publishing and distribution — it quickly becomes obvious that we are bailing a sinking ocean liner with a paper cup by reporting fugitive documents to GPO on a case-by-case basis.

What’s needed to build and maintain a *complete* national bibliography is the collective will of the library community, executive agencies, and GPO to create a policy solution and collaborative infrastructure that strengthens curation along the entire lifecycle of government information. *Free Government Information* has advocated for updates to Title 44<sup>16</sup> and OMB circular A-130<sup>17</sup> to push for the expansion of the definition of “public information,” and executive agency **Information Management Plans (IMPs)** to structure public information and websites in ways that can be more easily preservable.

There is long precedent for this kind of collaborative action between and among libraries, GPO and executive agencies. **ALA’s Government Documents Round Table (GODORT)** has focused on fugitives since its inception in 1972. In 1994, **University of Illinois Chicago** partnered with the **U.S. Department of State** to create the **Department of State Foreign Affairs Network (DOSFAN)** Electronic Research Collection (*dosfan.lib.uic.edu*). In 2003, **Gil Baldwin**, GPO’s Director of Library Programs Service, presented a “GPO/OMB Compact” — which unfortunately didn’t go anywhere — to try and deal systematically with federal printing.<sup>18</sup> The LOCKSS-USDOCS program has allowed 36 libraries to collaboratively preserve GPO’s *govinfo.gov* content since 2010. The **Congressional Data Coalition** has pushed several initiatives over the last ten years that have led to innovations in the way Congress makes its information available to the public, most notably by spurring the **U.S. House of Representatives** to publish its legislative documents in XML.<sup>19</sup> If the **House of Representatives** can make its information publicly accessible, collectible, describable, preservable and reusable in both human- and machine-readable formats, why can’t the rest of the federal government? 🌱

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#### Endnotes

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