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## Licensing Images from Russian Museums for an Academic Project

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*Museums tend to cope with a tension resulting from a conflict between their mission to disseminate the information about museum objects and the necessity to limit access to object representations/digital reproductions. Resolving this tension involves increasing knowledge on how museums imagine providing permissions to publish digital reproductions of their objects in an open access publication. The paper discusses the results of an experiment where a part of Russian museums provided digital reproductions and permissions to promote their institutions in an academic settings.*

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### Introduction

Suppose open access to museum images in the public domain and the transparency of workflows could be an indicator for the transparency of information kept at public institutions all over the world. Suppose societies wish to promote and endorse publishing high-resolution images on museum web sites, to improve national legislation and museum policies related to copyright protection, workflows to obtain images for scholarly purposes, and real life practice of obtaining images for scholarly projects. This will demonstrate social intentions to make public institutions less similar to private gardens with ‘no trespassing’ signs.

In addition, social, cultural and economic benefits of getting access to high quality museum content may be so great that the expectations of a better educated public will eventually lead museums to open their collections.

According to a recent body of literature, restrictive museum policies prevent scholars from disseminating high-quality research, burden innovative educational projects, and are in the way of sharing important works of art in the public domain (Crews 2012, Bielstein 2006, Lyon 2006, Petri 2014, Terras 2015).

Museum images in the public domain may or may not be hard to obtain as high resolution digital copies under different legislations (Kelly 2013, Petri 2014, Crews 2012). Knowledge about

the right of the public to get access to high resolution digital images in the public domain is getting more and more valuable as numerous images are being digitized at various cultural institutions.

‘On the one hand, the museum has a primary objective of informing the public about art and opening opportunities to understand and appreciate creative works. On the other hand, museums often feel the pressure to set restrictions that ultimately limit access and confine uses of art images. Policies reveal much about how museums choose to resolve this tension’ (Crews 2012).

However, declared museum policies and their relation to copyright law might be one thing, while museum practice related to digital rights and permissions may be quite different. This paper seeks to compare Russian museum policies with real life museum responses to the requests to provide digital images to publish them either for internal circulation or for open access on the university web site.

Museum and library images for digital humanities research may end up in the collections of visual resources intended for further educational purposes and for the purposes of building new digital editions which include the functionalities of repositories and analysis.

This paper seeks to approach the archives of visual materials sourced from cultural heritage institutions as digital scholarly editions which may develop along the same lines and face similar challenges.

If we consider the five principles for building digital scholarly editions discussed by Robinson in his DH 2013 conference paper (Robinson 2013), we can easily observe the similarity of the challenges outlined by the author to those applicable to digital visual editions.

The paper’s third and fourth principles are about the materials’ availability independent of an interface or institution. Robinson calls for

the Attribution Share-alike license and, indeed, considering a variety of research questions, models and purposes a visual edition can include a number of image tags that another user interface will never display for its users.

For example, the Metropolitan Museum of Art’s (MMA) impressive interface follows very general facets: who, where, what, when - and they provide for very broad searches (Rainbow 2012). However, if a researcher is interested in the prices of domestic interior objects from the MMA’s collection and their relation to consumerism in Early Modern age, they need to rely on a different interface with related search options.

A starting point towards shuffling museum images to arrange research datasets might be a university library collection of images licensed from national and international museum.

We sent enquiries to 182 Russian museums asking them to provide images for a digital collection of selected museum objects from historical and fine arts museums to be stored at the Research Library of Siberian Federal University. We also asked them to provide objects’ metadata and permissions either to access images from university computers or permit open access to the images. Another option was keeping images in the library collection database and providing access after a formal enquiry. The answers and models specifying terms and conditions to use images provided a set to analyze how museums imagine this interaction and find out whether museum community embraced a new model of a digital scholarly publication with its visual materials sourced from museums.

We argue that the notion of control, that is ‘getting credit and promoting the host institution’ (Kelly 2013), might be a major factor influencing the decisions of museum staff to provide free images.

Contrary to the opinion that museums are very much against sharing images from their

collections, Russian provincial museums may be quite cooperative and we demonstrate this through our experiment where we received permissions to use images for an educational project at a university library and we did not have to pay fees.

### **Research on Getting Permissions and Licensing Museum Images in the Public Domain**

A significant body of literature on transparency, openness and open access, the rise of the movements connected with ‘the right to know’ and the benefits of sharing scholarly information in a networked society (Lessig 2004, Florini 2007, Nielsen 2013, Schudson 2015) demonstrate the wish of the public/tax payers to get information on what is going on behind the walls of public institutions and the need of the research community to get access to digital data.

National legislations allow or forbid publishing the copies of artistic works with a different degree of freedom but the famous ‘vagueness of the law’ influences even the doctrine of the fair use in the US. Bowdoin writes that ‘‘fair users of another’s work may be considered infringers until fair use is proven in court’, which makes it difficult to copy and publish images for education, research and placing in different scholarly contexts due to the ‘threat of litigation’ (Bowdoin 2011).

Artistic works in the public domain can be copied and used/re-used in digital scholarly editions as ‘(p)ublic domain material is content which is not subject to copyright or other legal restrictions and belongs to or is available to the public without restrictions. Intellectual property rights may have been expired, may never have been applicable, or may have been forfeited by their original owner’ (Terras 2015).

However, copying museum materials in the public domain or obtaining a copy from

the museum administration has long been a costly and time-consuming enterprise involving considerable efforts. Although several museums have published large parts of their collections in the public domain online (see Terras 2015 for a detailed discussion and a list of museums) accompanying it with a permission to copy and even re-use/change images (Rijksmuseum, 2016), there are numerous institutions where obtaining images under the same legislation is not an easy enterprise.

One of the obstacles to getting a permission is the second act of the copyright ballet where permissions to use the photographic reproductions of artistic images come to the stage. Photographs are covered by copyright under many national legislations and museums may claim they own the copyright of the photographic reproductions when refusing permissions (see Petri 2014 for a detailed discussion).

The argument of the photographic reproductions of two-dimensional works being ‘just’ copies and not original artistic works (as opposed to the photos of three-dimensional works, for example, sculptures) is associated with the famous 1998 decision in the case of the Bridgeman Art Library vs the Corel Corporation in the US District Court for the Southern District of New York. This argument was further developed by Bielstein (2006) and Petri (2014). Petri (ibid), using numerous court decisions following American, British and European law, proves that the current concept of originality, a foundation of the copyright law, is not related to the ‘skill and labour’, the technical properties of photographic reproductions of two-dimensional objects.

Although few American museums claim copyright for digital images following the Bridgeman Art Library vs the Corel Corporation decision, many British, continental and Asian museums do exactly that and Russian museums are not an exception.

Terras (2015) has already demonstrated that ‘digitization is not a pre-requisite to gaining access to materials’, and that digitization at museums and open access to museum objects are not the processes where one is the logical consequence of the other. For example, while KAMIS CMS, a Russian collection management system requiring digital images of museum objects, is installed in more than 300 Russian museums, only a few of them publish more than 1% of their collection images online (Kizhner, Terras, Rummyantsev 2016).

International policies of open access to the images of two-dimensional objects from the public domain vary from publishing no images or a handful of high resolution/low resolution images on museum web sites (Uffizi, National Museum of Ireland, Australian National Museum) to publishing low resolution images and a notice to contact museum staff or third parties for permissions or licenses if you want to obtain a digital image (Ghent Museum of Fine Arts, Leo Tolstoy’s Museum). Other models include high-resolution images and a similar notice to contact museum staff/third parties (Hermitage Museum, Pushkin Museum of Fine Arts in Moscow, Musée d’Orsay) to obtain images for any use other than personal education; permissions to download high resolution images for scholarly publications (Metropolitan Museum of Art, British Museum, Victoria and Albert Museum) with a credit line. These models do not include commercial use. Still other models choose not to distinguish between commercial and non-commercial use for images in the public domain and some museums allow downloading images of up to 4000 pixels (Walters Art Museum, National Gallery of Art in Washington, DC, The Powerhouse Museum in Australia). These models may suggest a credit line be included but the museum does not impose any obligations, this is just encouragement, not an image use condition (National Gallery of Art

in Washington, The Yale Centre for British Art, Walters Art Museum).

Kelly (2013) demonstrates that control (‘crediting and promoting host museum’), the most important consideration related to image use in 2004 as found by Tanner (2004), prevailing over revenues and licensing, is currently losing its importance, at least in the case of American museums that are not restricted by the considerations of photography rights. She cites William Noel, the Walters former curator of manuscripts, who wrote, ‘We have lost almost all control, and this has been vital to our success’ (cited in Kelly, 2013).

Russian legislation is no exception when it provides the right of unrestricted use for the works from the public domain. On the other hand, as photography is included in the list of artistic works covered by copyright, the field is still open to debate, even more so because museums cannot follow the decisions of courts regarding photographic copies of two-dimensional images from the public domain as these decisions do not exist within the national legislation.

The law that governs the use of museum images in the Russian Federation is ‘The Law on the RF Museum Collections and RF Museums’ (1996). It says that no copying of museum images is allowed without the prior written permission of museum senior administration.

Real life work flow might be 1) a museum director gets a letter from an individual or a company, 2) they approve the request providing instructions whether it is going to be ‘fee or free’ policy, 3) a copy of the letter goes to the chief curator to get their approval, 4) the chief curator sends another copy to a departmental curator to find suitable objects, still another copy goes to the department of marketing to arrange a ‘fee or free’ agreement, still another copy goes to digital images department to find an image or to make necessary photos (Vorobyeva, 2016).

According to Olga Ibryanova, curator from Vasily Sourikov Museum in Krasnoyarsk, directors of smaller museums without a marketing department delegate this work to the chief curator who prepares a list of objects and written permission to use images. The list and the document need the museum's director approval. The rest of the work is done by departmental curators (Ibryanova, 2016).

It is possible to suggest that asking museum staff to provide images for a digital university publication might be a suitable method to find out what restrictions work in real life and what recommendations can be offered to the editors of digital scholarly publications about obtaining museum images in the public domain in the context of Russian legislation and practice.

### Method

Crews (2012) writes that a sample of policies might help to analyze the rules which dictate certain behaviors to museums and that it can also help in 'drafting licenses, policies, and other terms of use to address specific concerns' (ibid). His study is about researching museum policies collected from their web sites. It would be quite difficult to make a conclusion about Russian museum policies from written evidence as 1) few museums publish policies on their web sites; 2) the Russian law on museum collections is expected to govern museum actions, and 3) practices may differ from written museum policies. This was the reason why we decided to address this issue studying museums' responses to requests. This, of course, limits our results to educational projects carried out at large federal universities.

Given the Russian national legislation emphasizes the importance of a written permission to get a copy/publish digital images, we wrote a detailed request (we asked for 10 images from each museum) and printed it out on the Siberian Federal University's letter head. The letter was

addressed to museum directors (each time with a specific name which had to be found on the web). The letter outlined the project (building a digital edition of selected works from Russian historical museums and museums of fine art), it stressed the non-commercial nature of the project and the fact that it aimed at promoting Russian museum collections among faculty, students and staff of Siberian Federal University (36,000 students, 4,000 staff members). The letter mentioned a credit line and a link to museum web site as an essential condition of publishing images and it gave museums a choice of publication modes: 1) open access,

2) access to images from university computers, 3) keeping images/their metadata in the university library records to provide them on demand.

The sampling method to choose the museums participating in the experiment was discussed elsewhere (Kizhner, Terras, Rumyantsev 2016). The email addresses were obtained from Museums of Russia web portal which includes detailed information on 3063

Russian museums, ranks their web sites, posts news, discussion threads and announcements for curators. Online since 1996, it was initiated by the State Darwin Museum and supported by the RF Ministry of Culture (see also Mikhailovskaya and Nasedkin 2002). The database lists 3063 Russian museums including data on the number of visitors per year, the year when a museum was established and the number of curators among its employees.

Our sampling method was to choose 182 museums located in Moscow/Saint Petersburg and in provincial cities (Fig. 1). Each of the 80 administrative districts in the Russian Federation was represented by 2-3 museums with one of them belonging to the group with the number of visitors per year more than 50,000 people. The other two groups included small museums (the

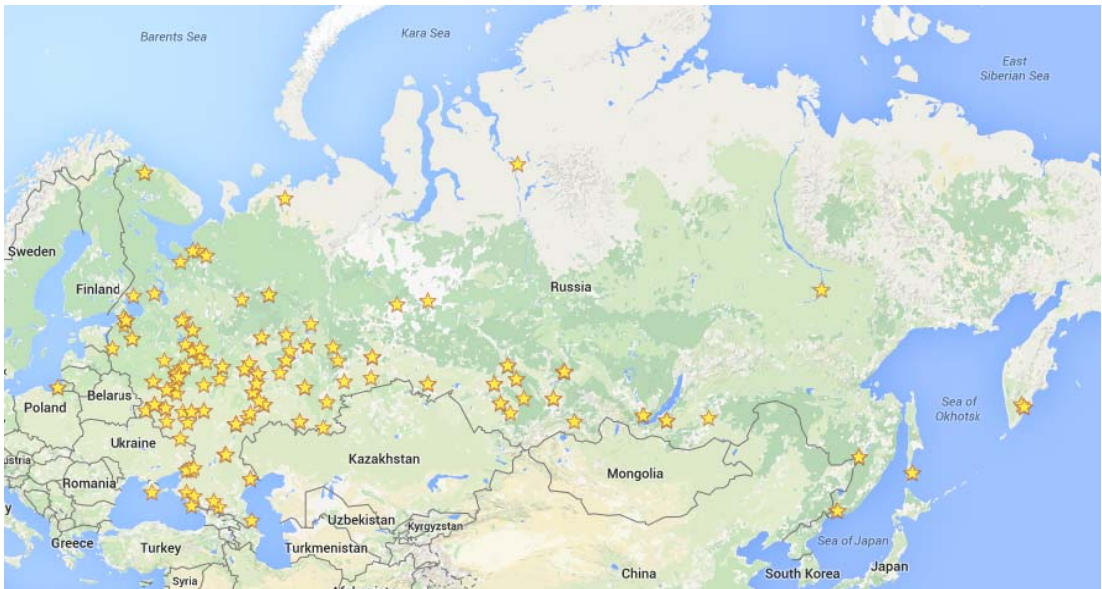


Fig. 1. Places where we sent requests to take part in the project and provide images

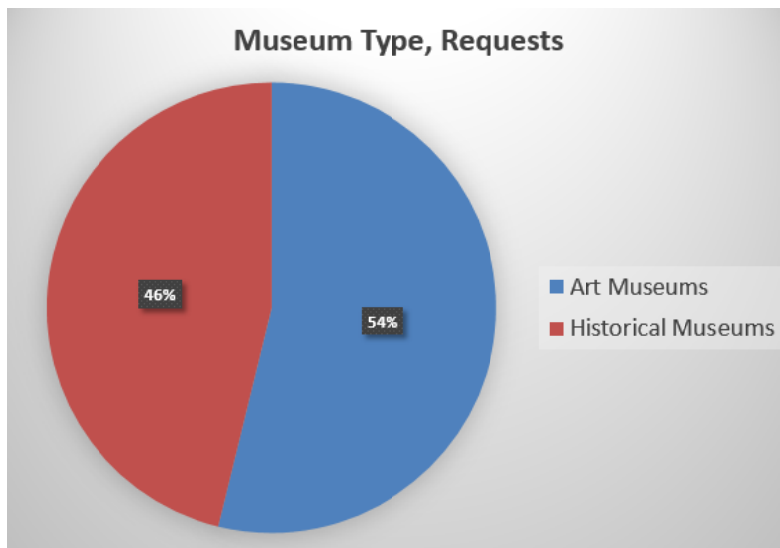


Fig. 2. The ratio of art museums and historical museums that received letters with requests to participate in the project

number of visitors per year was fewer than 15,000 people) and medium museums with the number of visitors between 15,000 and 50,000 per year. The ratio of art museums and historical museums is shown in Fig. 2. This gave us an appropriate sample of museums to begin to understand different museum practices across Russia.

The first letters brought only a small amount of responses (3% of the museums in the sample) and a museum director recommended we change the text to suit a corporate museum standard (addressing the letter directly to the museum director and writing their name in the first line). This, indeed, increased response rate to 16% (25 museums).

The letters were sent in January 2016, the first replies came in February 2016 and they continued to arrive until May 2016.

We received 44 responses to our request. Forty responses expressed consent to participate in the project and prepare images, metadata and a written permission. The response rate of 24% was much higher than it was anticipated considering lower response rates for some other studies which involve answering questions or providing information (Kizhner 2016).

Four refusals came from large museums with the number of visitors exceeding 50, 000 people a year. Three of them were historical/ethnographic museums and one of them was a fine art museum.

The data obtained from museums was processed in a spreadsheet. We considered the characteristics that were specific for museums, policies related to permissions to use images for an educational project, and images submitted for the publication in a digital edition. The museum properties included museum details, contact person and their details including their job title to find out who is responsible for providing permissions, the size of a museums (measured as the number of visitors per year), and its distance from Moscow. The characteristics of policies were document types (written permissions or license agreements) and access type (open access or internal circulation). The technical properties of images included the number of pixels on the longest size and the type of image capture - professional photography and non-professional photography. We considered images non-professional if they were not cropped, leaving other objects or even a frame of a painting in the image.

### **Findings**

Images from museum collections are supposed to be licensed, in particular, to develop

digital scholarly editions with new interfaces and search options arranged to answer new research questions.

Russian legislation does not allow copying images in the public domain from museum web sites and the Russian Law on Museum Collections stipulates the necessity to ask museum senior management for permissions when copying images for any purposes. Russian museum web sites tend to inform the public that written permissions or license agreements are essential in every case other than personal and educational use. They advise that permissions are granted individually and decisions may vary depending on a particular case.

#### *4.1. Participant analysis*

As shown in Fig. 3, most respondents (27 museums or 68% of respondents) were large provincial museums with the number of visitors ranging from 63, 000 to around 700, 000 a year. Four largest museums in this group were major tourist attractions near Moscow and Saint Petersburg. The two museums representing Russian capitals were large museums, with around 1 million visitors a year for a museum in Saint Petersburg to around 6 million visitors a year for a museum in Moscow.

Sixteen museums out of forty respondents were the museums of fine art (40%), the rest were historical museums (Fig. 4). They were founded between 1864 and 1994, a third of museums were established in the first half of the twentieth century, about a quarter (12 museums) were founded in the nineteenth century, the rest of them were newer museums.

In terms of geography (see Fig. 3), most respondents were from the part of the country located in Europe. No museums located in the Far East wrote back or sent their images. The distance from Moscow varied from 74 kilometers to around 5, 200 kilometers (the farthest museum

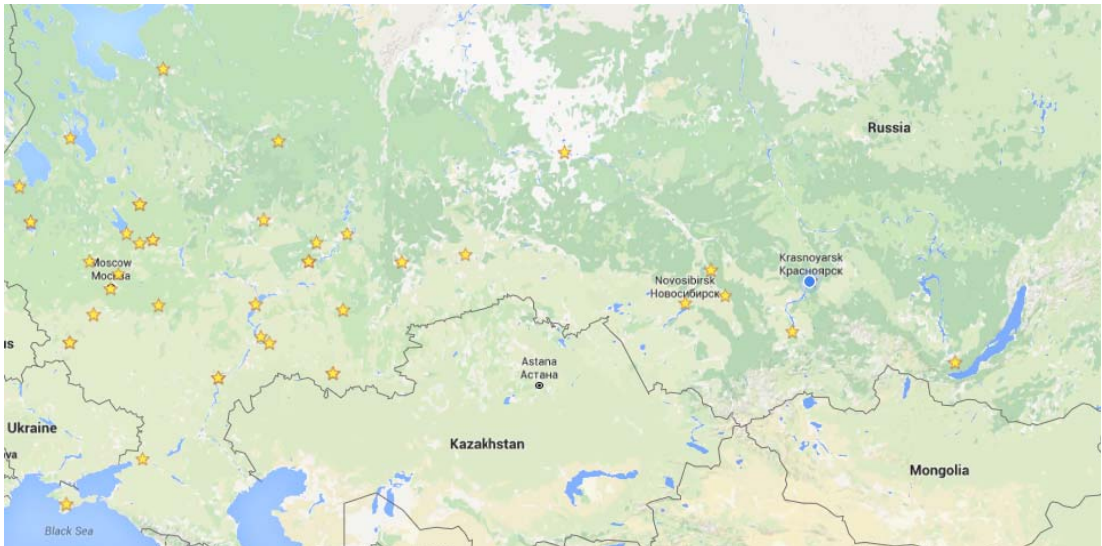


Fig. 3. Places with museums that agreed to participate in the project and provide images

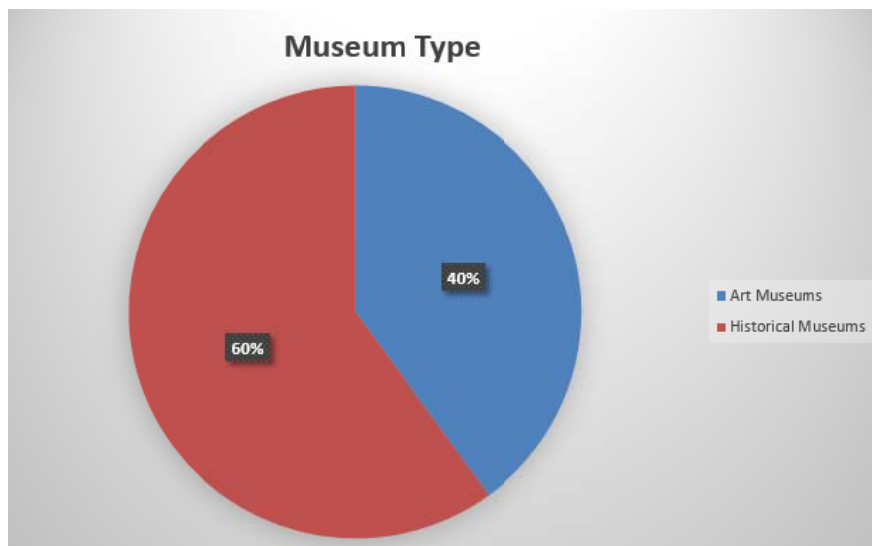


Fig. 4. The ratio of art museums and historical museums that agreed to participate in the project

was in Irkutsk near the Lake Baikal), with the average distance of around 1,500 kilometers.

People responsible for contacting our university to discuss educational projects varied slightly in their working titles. A quarter of our museum contacts were chief curators, another quarter were deputy directors for research. Most people were quite interested in promoting their museum among Siberian Federal University's

faculty and staff. Some people mentioned the importance of the project.

Eleven museums agreed to participate in the project but they did not send any images or documents specifying their policies (see Fig. 5) either because they were overcommitted or because, in the words of a chief curator, it was a great responsibility to select suitable images to represent their museum.



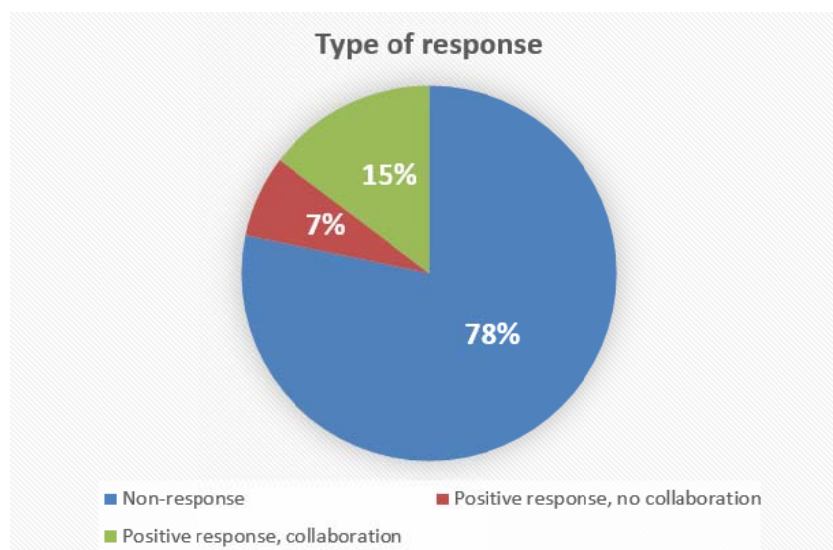


Fig. 5. Types of responses to 184 letters sent to Russian museums with an invitation to participate in the project

### Policies analysis

Several museums recognized that contributing to a digital scholarly edition or a digital university project was a new enterprise, completely unknown in terms of the documents providing permissions. Experience with printed publications prevented their thinking in terms of a digital scholarly edition with its own terms of agreement. Some of them asked for a sample permission letter or a sample license agreement. Other museums felt quite at ease giving permissions to publish images in an open access publication. A representative of a large museum near Moscow said: «The images we provide for your project were published long ago, you are free to use them for open access».

Twenty eight museums in the sample did not suggest a fee for licensing images. A large museum in Moscow replied to our request with a proposal of a discounted fee considering it was an educational project. Our letter with questions on the amount of the fee and the sample of the license agreement was never answered.

Russian museums are not unanimous in their policies regarding art image use and re-use. Although the rule of granting a written

permission to use images (including those in the public domain) for publications does not specify the necessity of a license agreement and most museums found a written permission sufficient, ten museums (36%) preferred more formal documents (license agreements) signed after they consulted museum lawyers. The agreements and written permissions stipulated the necessity to provide a credit line and license agreements added the university's promise not to share images. This might mean that Attribution Share-alike CC license (Robinson 2013) will not work within the Russian context as each user with a wish to copy and re-use an image has to ask museum administration for a written permission.

Most museums stipulated that they allow image use only for the project outlined in the request (a collection of images). This might mean that if we want to move from the repository to analytical tools or to linking images to other data creating a networked curating environment (Drucker 2013) we need to apply for a new permission and it may not be necessarily granted.

As shown in Fig. 6, a half of museums (13 institutions in the sample) preferred to permit

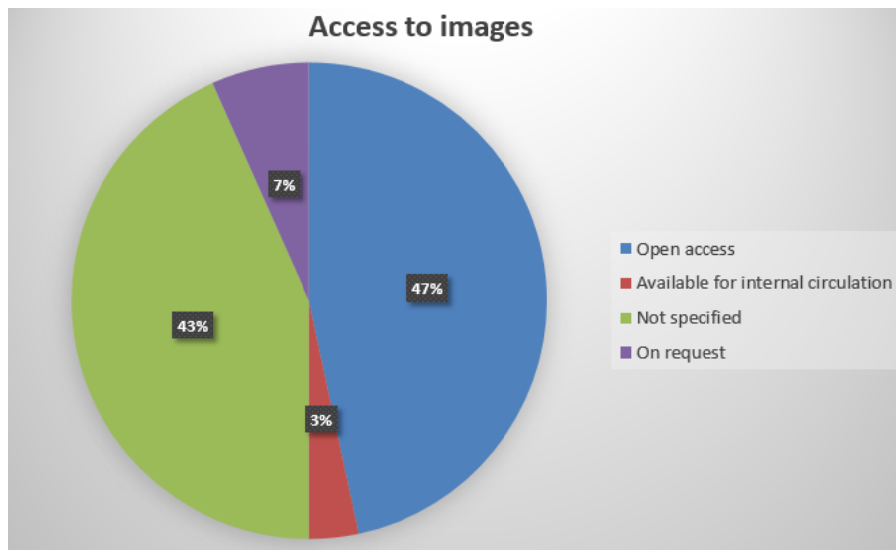


Fig. 6. Type of access to museum images

open access, 43% (11 museums) chose not to specify their terms. Two museums provided images for internal circulation, one museum provided a permission to publish its database records for open access so that those who want to see an image apply for a further permission.

The observation that 43% of museums had difficulties when making their decisions on what policy (open access or internal circulation) to choose may demonstrate that they prefer not to take responsibilities for the decision which may influence their position in the community.

### Image Analysis

At the time of writing, twenty two museums (a half of those who agreed to take part in the project) sent us 244 digital images, metadata and documents regulating image use. The images range from 1000 to 5000 pixels along the longest side and most of them represent museum objects in the public domain. However, a part of them represent contemporary art (artists died less than seventy years ago or they are still alive). When museums sent us a license agreement or written permissions they addressed this issue stipulating that museums hold the necessary

rights that cover both contemporary art and digital reproductions.

Most artworks represented Russian art, a few paintings and some decorative art in the public domain were of French, Dutch, British, and Chinese origin.

Image capture quality was tolerable for three quarters of the museums. Images that were not cropped came from the six museums in the sample (Fig. 7). However, it was quite rare that digital copies were free of glare, presented a thoroughly chosen background, demonstrated calibrated light or were, indeed professional.

Future educational projects may be recommended to accompany their requests with a detailed guide on image capture. This, however, may put at risk the very possibility of receiving images as few provincial museums have skilled staff and technical equipment to provide high-quality pictures.

### Conclusion

We have developed and applied a new approach to find out what policies Russian museums follow when collaborating with universities to build a visual scholarly edition. The method has

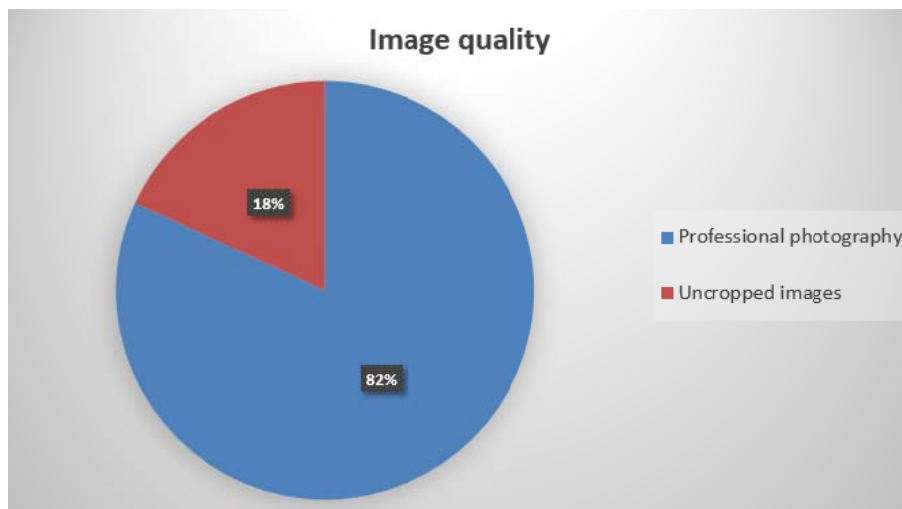


Fig. 7. The ratio of non-cropped images in the pool of images provided by museums for the project

demonstrated that large provincial museums are indeed interested in promoting their collections in an academic environment. First, they tend to follow the policies implying providing permissions to use images without charging a university a fee. Second, our approach provides an understanding that feeling of ‘control’ (Kelly 2013) is still important for museums and their permissions are only related to the project specified in a formal request. This might mean that moving images across interfaces (Robinson 2013) is burdened by the necessity to follow a complex set of rules and the feeling of

‘control’ which prevents museums from letting the public use images in the way that they may feel is inappropriate (Kelly 2013). Building a networked curated environment (Drucker 2013) as an academic project and scholarly endeavor might still be an exciting dream rather than reality within Russian legislation and complications of museum policies. These results demonstrate the power of the approach in finding out whether museums are indeed interested in links with an academic environment and what their policies might imply.

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## **Как лицензировать изображения из российских музеев для академического проекта**

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*Музеям часто приходится решать проблему конфликта между миссией распространять информацию о музейных объектах и необходимостью ограничивать доступ к цифровым репродукциям музейных объектов. Решение этой проблемы включает увеличение количества знаний о том, как музеи видят предоставление разрешений для публикации цифровых репродукций в публикациях с открытым доступом. Статья обсуждает результаты проекта, где часть российских музеев предоставила цифровые репродукции и разрешения использовать изображения для того, чтобы продвигать свои учреждения в академической среде и распространять знания о музейных коллекциях.*

*Ключевые слова: цифровые изображения, авторские права, музейные разрешения, российские музеи.*

*Научная специальность: 24.00.00 – культурология.*

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