

Tape Recording and Photography on Shabbat

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This paper was adopted on November 7, 1984 by a vote of 7-7-3. Members voting in favor: Rabbis George Pollak, Mayer E. Rabinowitz, Barry S. Rosen, Joel Roth, Morris M. Shapiro, Henry A. Sosland and Alan J. Yuter. Members voting in opposition: Rabbis Kassel Abelson, Isidoro Aizenberg, Morris Feldman, Judah Nadich, Phillip Sigal, David Wolf Silverman and Gordon Tucker. Members abstaining: Rabbis David Feldman, Robert Gordis and David H. Lincoln.

SHE'ELAH

Questions have been raised regarding the use of a tape recorder, specifically to record portions of the Shabbat service, and regarding photography on Shabbat. We feel that these two issues have enough in common to be dealt with in one paper.

TESHUVAH

Tape Recording

The subject of tape recording on Shabbat and Yom Tov has been brought before the Committee on Jewish Law and Standards on previous occasions.¹ Discussion has centered primarily on recording as the operation of an electrical device. Those who have objected to it have argued that tape recording does not enhance the enjoyment of Shabbat (*oneg Shabbat*) and that an actual *melakhah* is involved.

We agree with those who have objected to use of a tape recorder on Shabbat and accept their argument that recording involves a *melakhah*. We propose, however, to reconsider the type of *melakhah* which is actually occurring when a tape recorder is used.

As Rabbi David Lincoln has pointed out in his paper on videotaping, the process of taping cannot be understood fully without some knowledge of

physics.² Simply put, a magnetic field is set up, and information is stored on the tape. The fact that the data on the tape may appear to us as a series of unrecognizable scratches, or may not be visible to the eye at all, does not deny the presence of a permanent record. This creation of a permanent record places tape recording in the category of *ketivah*, an *av melakhah* forbidden on Shabbat.

It has been argued that tape recording, even if considered *ketivah*, should not be forbidden because it is "certainly not writing that is done in the usual way" and because it is not visible.³ We reject both of these arguments. The accepted definition of *ketivah* is writing in a permanent way on something permanent, i.e., *davar hamitkayyem*,⁴ and a tape which has been used for recording fulfills these conditions. While taping is not what we usually mean when we speak of writing, it serves the same purpose as writing: the creation of a permanent record. In fact, the very reason we are asked to permit taping on Shabbat is that people wish to create a permanent record of a religious service.

It is undeniable that *ketivah* was not performed this way in the time of the *Mishkan*, the model used for deriving the thirty-nine *avot melakhot*. This, however, does not prohibit us from defining tape recording as *ketivah*. As Rabbi Rabinowitz pointed out in his Addendum to Rabbi Lincoln's paper, "Videotaping on Shabbat," we must define *ketivah* in terms of the methods by which we make permanent records.⁵ Our historical approach to halakhah necessitates expansion of existing definitions to include modern technological devices.

Given this definition of tape recording, we feel that recording should be forbidden on Shabbat.⁶ Since the *melakhah* involved, *ketivah*, will occur on Shabbat and will be set into motion by the voices of those participating in the religious service, it makes no difference if the machine is set up before Shabbat and/or operated by a non-Jew.

Photography

The Law Committee has ruled on previous occasions that photography is prohibited on Shabbat as a violation of both the law and the spirit of Shabbat.⁷ The prohibition holds even when the photographer is a non-Jew and does not distinguish between the sanctuary itself and other parts of the synagogue.

Photography necessitates the presence of a light sensitive material, e.g., silver halide. When the shutter of the camera is opened, light hits the material, causing the recording of a latent image on the film. Later, during the development process, chemical reactions will transform this latent image into an actual picture. When a Polaroid camera is used, the entire

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process occurs immediately after the picture is taken.

We believe that the act of photographing, like that of tape recording, can be categorized as an act of *ketivah*. It is true that a non-Polaroid camera produces only a latent image, and that in some instances (e.g., failure to develop the film or exposure of the film to light), the image will never be brought to fruition. Nonetheless, it is the act of taking the picture itself which makes possible the preservation of that image as a permanent record.

It is recognized that some may reject the above position, arguing that neither tape recording nor photography fit into a narrow definition of *ketivah*, and that a narrow definition of rabbinic categories is the most appropriate. We of the historical school cannot accept this argument. We feel that even if one does not espouse the position we have outlined, one can nevertheless find ample reasons to forbid both of these activities on Shabbat. Both involve change, one through a magnetic field, the other through chemical substances. Furthermore, these activities, especially photography, may violate the solemnity of the synagogue.

CONCLUSION

Many of those proposing that we allow tape recording and photography on Shabbat argue that the creation of permanent records of a certain event, e.g., a Bar/Bat Mitzvah, leads to the enhancement of the family's Jewish life.⁸ In a recent *she'elah* in which this Committee was asked to reconsider its position on photography on Shabbat, an additional consideration was raised. The inquirer noted that given the choice between a kosher *seudat mitzvah* at the synagogue without photography, and a non-kosher reception outside the synagogue where photography is permitted, even those families to whom kashrut is important may choose the latter option.

While we are aware of people's desire for permanent records of important occasions, it is not clear that these records will enhance a family's Jewish life. Pictures of a *seudat mitzvah* at a child's Bar Mitzvah or a tape of a child chanting her Haftarah are not likely to encourage a family to observe Shabbat or attend services without the motivation of a special occasion. The fact that people are willing to take a *seudat mitzvah* to a *treif* restaurant is ample proof that the Bar/Bat Mitzvah ritual does not occasion a greater sensitivity to religious values and observance in such cases. Do we really believe that photographs of the reception or a tape of the service will do years later that which the ceremony itself has failed to do? We cannot accept the notion that we should permit a clear violation of Shabbat for such purposes.

(*Editor's Note:* The effect which the adoption of this paper has upon the position of the Committee on Jewish Law and Standards in regard to tape recording and photography on Shabbat is discussed in the minutes of the meeting of November 7, 1984.)

NOTES

1. *Proceedings of the Rabbinical Assembly XVIII* (1954), p. 52. See also Jacob Agus, "Recording a Service on the Sabbath," an unpublished responsum, and RALA #'s 032354, 102064, 072865 and 012668.

2. "Videotaping on Shabbat" by Rabbi David H. Lincoln appears elsewhere in this volume.

3. Agus, "Recording a Service on the Sabbath," p.1.

4. M. *Shabbat* 12:5, Maimonides, *Mishneh Torah, Hilkhot Shabbat* 11:15.

5. "An Addendum to 'Videotaping on Shabbat'" by Rabbi Mayer Rabinowitz appears elsewhere in this volume.

6. We recognize that defining tape recording as *ketivah* raises a question about erasing a tape containing the name of God. Believing as we do that recording is *ketivah*, we would not allow such a tape to be intentionally erased. Therefore, tapes made for the purpose of teaching cantillation or prayers should either not contain the name of God or should not be destroyed. We would suggest that students be advised to care for such tapes as they do their *siddurim*, Bar Mitzvah booklets and other printed materials, and that they be returned to the synagogue for further use if no longer needed by the student.

7. RALA #'s 120359, 051561, 121361, 091070, 080774 and 060178.

8. Agus, "Recording a Service on the Sabbath," p. 3.

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YOM TOV SHEINI

