

On Recording Shabbat and Yom Tov Services

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This paper was submitted in September 1989 as a concurring opinion to the responsum written by Rabbi Arnold Goodman, “May a Shabbat Service be Taped?”

We agree with Rabbi Arnold Goodman’s conclusion that taping Shabbat or Yom Tov services in either audio or video form can be done permissibly, and we think that the conditions he sets are right and proper. However, Rabbi Goodman’s argument depends upon a point which is both controversial and unnecessary for his conclusion. We will explain why we do not endorse that point and nevertheless accept his conclusion.

Taping Is Writing

The primary halakhic consideration which taping on Shabbat raises is whether it constitutes כתיבה (writing) in the halakhic sense of the term. Our ancestors clearly did not know of tape recorders, and so contemporary rabbis must decide whether or not taping is properly subsumable under the category of כתיבה.

Rabbi Goodman has argued that taping should not be seen as כתיבה because writing occurs only when “hand and fingers create upon a surface symbols which are apparent to the naked eye.” The writing instruments have changed through the ages, as have the surfaces and the symbols, as he notes; but in each case of writing there is “a process of placing words or images on a surface by manipulating instruments with one’s hands or fingers.” While taping is different from writing in this way, and while writing has generally included the factors he mentions, we think that taping nevertheless should be considered כתיבה because in the case of both, one who writes and one who tapes, the *intent* and the *effect* of the acts are the same – namely, the creation of an enduring record which can later be referred to. Both written materials and tapes

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may later be erased, but the reason one writes or tapes in the first place is to preserve a record of something – at least for a time. In this way the Sabbath categories of כתיבה and קושר (tying a knot) are alike: in both cases, Jewish law prohibits doing that which will create an enduring entity while it attaches no liability to the creation of something designed by its author to be temporary (though in some cases, like doodling, such non-enduring creations were prohibited derivatively by rabbinic injunction).

As we see it, then, the critical components of כתיבה are that a record be intentionally made, that it be meaningful, and that it be sufficiently enduring to allow for future reference. The taping of Shabbat or Yom Tov services by a Jew meets all these criteria and is thus impermissible. Still photography, for the very same reasons, is likewise forbidden.

While taping is, in our view, prohibited as an act of כתיבה on Shabbat, the use of a microphone or televised transmission is not, at least for those who accept the use of electricity on Shabbat. (See Rabbi Tucker's paper on the matter of instantaneous transmission, approved by the Committee on Jewish Law and Standards on February 8, 1989.) Similarly, if one accepts the use of electricity on Shabbat, playing games on a computer would be permissible as long as one does not write the file to a disk. Note, however, that doing work on a computer on Shabbat would be prohibited, even if one just left the computer on until Shabbat ended and wrote the file to the disk at that time, because engaging in work-related activities is a clear violation of "Remember the Sabbath day to keep it holy" (Exodus 20:8) even if it could be justified as being in conformity with "Observe the Sabbath day to keep it holy" (Deuteronomy 5:12).

Taping Permissibly on Shabbat

Even though we think that taping is an act of כתיבה and is therefore prohibited on Shabbat and Yom Tov for Jews to do directly, taping *can* be permissibly done under the strictures outlined by Rabbis Agus and Goodman. Specifically, it is acceptable to tape a Sabbath service if (a) the taping machine is set before Shabbat, and/or (b) a non-Jew in the regular employ of the synagogue for other duties operates the machine as part of his or her overall job. (Indeed, for those who use electricity on Shabbat, these constraints make sense only if taping constitutes כתיבה in the first place; if it is not כתיבה, as Rabbi Goodman contends, taping would be totally permissible, and these conditions would be unnecessary.)

If a machine is set before Shabbat and a non-Jew is not charged with checking it on Shabbat, there is some danger that a Jew will tamper with the machine if something goes wrong (שמא יתקן). That worry is

diminished with regard to taping machines, however, since nobody knows whether or not they are functioning properly until after the tape is made and rewound for viewing. Moreover, unlike sound systems, the improper functioning of taping machines is not apparent to the people in the congregation. It is advisable, though, that either a non-Jew be given the responsibility to make sure that the machine goes on as scheduled, or that the machine be locked in some way to prevent Jews from handling it on Shabbat.

The Issue of Indirect, but Inevitable Action (פסיק רישא)

While the concern to prevent adjusting the machine presents a practical problem, albeit a surmountable one, Rabbi Joel Roth, in Committee discussion, raised an important theoretical problem with our position. Rabbi Goodman maintains that “the issue of energizing the electrical impulses for taping is no more or less a concern than the impact upon heating and air conditioning with the arrival or departure of each individual from the sanctuary.” Rabbi Roth argues that they are different in that, on any given occasion, I cannot know whether my particular entrance into the room will trigger the thermostat to start the heating or air conditioning system, whereas setting up a tape machine means that somebody entering the room will automatically cause the machine to vary the configurations of the electro-magnets on the tape to record the presence of that person. Entering the room with a tape recorder set up thus inevitably leads to writing of a certain sort; taping therefore is a matter of פסיק רישא and should be forbidden.

We contend that this is not the case. Since the taping machine is set to tape, no matter who comes into the room and no matter what happens there, the person entering the room is not at all a causative agent of the process of writing itself. Such a person, in fact, has *less* potential to begin or end the taping than he or she does to initiate the functioning of the heater or air conditioner: the recording will go on no matter what he or she does in the room, while the heater or air conditioner *may* be activated by simply entering the room. *What* will be recorded is affected by the events there, but not the fact *that* recording is going on. This is in contrast, for example, to walking onto an automatic electric door opener, where the person clearly does cause the machine to function – albeit indirectly; that *is* a case of פסיק רישא because the person is inevitably initiating an action, while entering a room where there is a tape recorder is not an instance of that principle because it only changes the *form* of an action which has already been set in motion. We note, parenthetically, that we *must* rule this way or else it would become forbidden for any Jew on Shabbat or Yom Tov to walk into the lobby of

an apartment building with a surveillance camera for fear that the camera in the lobby is not only transmitting images to some remote television receiver but is actually recording on tape everyone who enters the building. Such a result would be impractical to the point of intolerability (אין רוב הדיבור יכול לעמוד בה).

Permissible But Possibly Not Desirable

We have concluded that taping a service on Shabbat or Yom Tov, when done in accordance with the restrictions specified above, is permissible. This is *not* a חקנה, as Rabbis Agus and Goodman suggest; it is simply a matter of applying the sources to the realities of contemporary machinery.

Having said this, we want to underscore the importance of the rabbi making a thoughtful judgment as to the desirability of such taping. In his responsum, Rabbi Goodman suggests some cases in which it might be desirable to tape a service, and there are probably others. That, in fact, is why we voted affirmatively, with this substitute reasoning, rather than negatively: our analysis convinces us that taping can be done permissibly, and we trust rabbis to discern when taping services is ultimately good for Jews and Judaism, and when not.

With this in mind, we do want to call attention to the section of Rabbi Goodman's responsum in which he points to significant objections to taping a service. Rabbis must consider these seriously in deciding whether or not to allow taping. In addition to the ones he mentions, we note that tapes destroy the "mythic quality" that a ceremony would otherwise assume in people's memories. Tapes indiscriminately record the mistakes and limitations of events along with their positive features. Human memory, in contrast, blessedly enables us to filter out the miscues so that we can remember such events as being better than they actually were. Maybe families are better off *not* having a recording!

One must recognize, though, that these aesthetic considerations would apply to bar or bat mitzvah ceremonies, weddings, and the like held on a weekday as well, and yet on such days many rabbis have no objections to taping. If that is the case for most of us, we must face squarely that taping on Shabbat or Yom Tov bothers us most because of the potential violation of Jewish law governing those occasions. We have argued that since taping itself is a form of כתיבה, it *is* a violation of Shabbat or Yom Tov when done directly by a Jew on those days; under specific conditions, however, it can be done within the letter of the law. We urge the rabbi of each congregation to consider carefully whether in his or her specific context, it can also be done within its spirit.