Reflections on Rabbi Joshua Heller's responsum "Streaming Services on Shabbat and Yom Tov"
https://www.rabbinicalassembly.org/sites/default/files/2020-05/Streaming%20on%20Shabbat%20and%20Yom%20Tov%20Heller.pdf

by Rabbi Claudio Kupchik

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We are all deeply indebted to Rabbi Joshua Heller for his very erudite and insightful responsum on the permissibility of streaming services on Shabbat and Yom Tov, which was much needed in order to find effective and appropriate responses to the COVID-19 crisis. That said, I have slight disagreements with his conclusions and proposals in minor ways, as I explain below.

Heller bases his take on the permissibility of the use of screens on Shabbat and Yom Tov on his interpretation of Rabbi Daniel Nevin's position on his responsum "The Use Of Electrical and Electronic Devices on Shabbat" https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/2011-2020/electrical-electronic-devices-shabbat.pdf
Heller writes (p. 11): "According to Rabbi Nevins' analysis, interacting with an internet-connected device and typing an address to activate a video connection, would be a violation of Shabbat, through koteiv on a biblical level, and that other types of typing would be at least toledat koteiv." However, Nevins' own words (on p.35) read: "The intentional recording of data—whether of text, images or sound—is forbidden on Shabbat as a derivative form of writing… Thus we would prohibit the Sabbath operation of a digital camera, voice recorder, or computer used for writing text or recording audio or video files. These activities are all derivative forms of "writing" and are therefore biblically forbidden on Shabbat and YomTov."

We need to differentiate the <u>intentional recording of data</u> such as when using a computer as a word processor or a digital camera to record pictures from the <u>unintended,</u> automatic recording of a URL or a mouse click by software in the background while navigating the web. Even though both actions are forbidden on Shabbat, the intentional one is a biblical violation while the unintended one, מלאכה שאינה צריכה לגופה (see Nevins, p.15), is a violation of a rabbinic decree. This distinction is meaningful, as Rabbi Heller writes: "*In she'at hadehak (pressing or unusual circumstances), or a situation of more vague concern about well-being, we would still seek to minimize violations, but might be more willing to rely on loopholes to skirt prohibitions that are only shvut or derabanan. Rabbi Nevins notes that a shvut may be overridden when there is a positive religious obligation at stake (the classic example being caring for the comfort and dignity of people).*" Beyond that, there is a consensus among Halakhic authorities that the need to perform a Mitzvah overrides a rabbinic prohibition added on top of another rabbinic prohibition "שבות דשבות". The leniencies proposed by Heller, all involving rabbinic prohibitions, applied in the case of electronic activities that in most cases (except <u>intentional</u> recording of text, images or data) are based on the rabbinic prohibition of unintended consecuences מלאכה שאינה צריכה לגופה, and constitute a clear case of a rabbinic prohibition on top of another, שבות דשבות. The need to perform a Mitzvah in a time of distress and suffering clearly gives ample Halakhic basis and numerous precedents to override the rabbinic decrees stacked one on top of another.

I prefer a path suggested by Heller in his analysis, but not followed in his P'sak (decision). He proposes mainly to have an automated system that, being that the techology is not yet ready to be fully automated, needs to be managed by a non-Jew. While I agree that a fully automated system would be the best solution, that is not yet a realistic option, and rather than having a non-Jew manage the system I think we should rather rely on the leniency regarding unusual or atypical ways of doing things, כלאחר יד. For example, Maimonides rules: וְאַף עַל פִּי שֶׁהוּא מְחַמֵּר מְחַמֵּר בְּשַׁבָּת כִּלְאַחַר יָד הוּא וּמִפְּנֵי הַמִּצְוָה מֻתָּר.
"Even though he is driving a laden animal (which is prohibited) on Shabbat, it is in an unusual manner,

and in case of a Mitzvah it is allowed"(רמב״ם קרבן פסח א יט). Furthermore, in cases of possible life threatening emergencies that override Shabbat prohibitions, the Talmud says that ואין עושין דברים הללו לא ע״י נכרים... אלא ע״י גדולי ישראל "And these acts should not be performed by gentiles ... but should be done by the greatest of the Jewish people" (Yoma 84b). Isaiah di Trani explains that the emergency cannot wait until a non-Jew can be found to do what is needed, but has to be dealt with immediately in the most effective way. In the case of a streaming service I'd suggest that having it managed by a non-Jew is an inadequate and ineffective way. Jewish services are long and it would be hard for anyone not initiated in the intricacies of Jewish liturgy, Jewish or not, to know where to mute and unmute and where to switch from speaker view to grid view. In addition, most people will not have a non-Jew at home helping them to connect to the streamed services and most likely will not be able to adopt the automated solutions proposed by rabbi Heller, which require tinkering with the device's registry.

Based on these considerations, I propose that for the duration of the COVID-19 crisis and while we can't have a Minyan physically present, we stream services using a bi-directional platform such as zoom. Furthermore, the management of the zoom stream should be done by a knowledgeable Jewish person, כִּלְאַחַר יָד, while doing so in an unusual way, like using the mouse with the non-dominant hand. Congregants should be encouraged to join the streams using a one-click password-embedded solution in an unusual way as well, such as with the pinky finger, if using a tablet or phone.

This crisis can perhaps provide us with a teachable moment. We should start an educational campaign for our congregation stressing how important it is to liberate ourselves from the yoke of the screens and other electronic devices. Rather than only making our lives easier or better, these devices often invade our days and enslave us. That is particularly so on Shabbat and Yom Tov, the days of rest. Allowing the use of screens while doing it in a different and unusual way, and only for the purpose of meaningful religious connection with our community can perhaps help people become aware and mindful of the importance of not using the devices otherwise. This could be a positive outcome from the crisis, an increased awareness of the importance of distinguishing between the holy and the profane use of technology.

Restating our indebtedness to Rabbi Heller, I conclude with a meditation to be used by those connecting to a streaming service on Shabbat or Yom Tov, which I wrote based on his suggestion of new rituals to go along with streaming.

"Hineni Muchan Umzuman, I am ready and prepared to fulfill the Mitzvah of praying with my congregation, as it says in the Talmud (Berachot 8a): *"What is the meaning of the verse:* " וַאֲנִי תְפִלָּתִי-לְךָ | ה׳ * עֵת רָצוֹן Let me, my prayer, be unto You, Adonai, in a time of favor" (Psalms 69:14)? What is a time of favor? It is the time when the congregation is praying."* In order to find favor and perform this Mitzvah at this unusual time of worldwide distress, when we cannot be physically present at the synagogue, we need to do so by electronic means, and therefore I intend to use the devices in unusual ways, with my pinky finger or with my non-dominant hand. I will do this in order to minimize any potential violation of the law, as an act of love for Judaism and of devotion for the Torah. May I be guided in all my deeds by the love of Torah and may I be blessed to see the fulfillment of the words of the prayer: "Heal us, O Lord, and we shall be healed, save us and we shall be saved רְפָאֵנו ה׳ וְנֵרָפֵא. הושִיעֵנו וְנִוָּשֵעָה"

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