

OH 340:3.2020a

**Streaming Services on Shabbat and Yom Tov**  
**Rabbi Joshua Heller**

*Approved on May 13, 2020, by a vote of 19-3-3. Voting in favor: Rabbis Aaron Alexander, Jaymee Alpert, Suzanne Brody, Nate Crane, Elliot Dorff, David Fine, Susan Grossman, Judith Hauptman, Joshua Heller, David Hoffman, Jeremy Kalmanofsky, Steven Kane, Jan Kaufman, Daniel Nevins, Micah Peltz, Robert Scheinberg, Deborah Silver, Iscah Waldman, and Ellen Wolintz-Fields. Voting Against: Rabbis Amy Levin, Avram Reisner, and David Schuck. Abstaining: Rabbis Pamela Barmash, David Booth, and Ariel Stofenmacher.*

**Introduction<sup>1</sup>:**

This teshuvah was in its early stages before the COVID-19 crisis, as some Conservative synagogues had already instituted electronic access to their services and others were considering this innovation. This question took on a dramatic new urgency as almost every synagogue in the world was forced to suspend in-person physical worship, and even as some begin to re-open, it is likely that it will be many months before large groups can assemble together safely. Some prayer communities have found ways to meet the needs of their members without using electronics on Shabbat. Others have adopted these technologies with greater or lesser degrees of concern for the *halakhic* implications. As a Conservative movement, we value *halakhah*, and as a committee, we seek to provide guidance to rabbis and laypeople as to how to live lives strengthened and inspired by its observance. We hope that rabbis and communities will remain within the bounds of this guidance in full. We are realistic that some may see this as a time for *hora'at sha'ah*, unusual steps not consonant with traditional practice. We hope that those communities will find this analysis to be a useful roadmap for mitigation of potential violations. Given the urgency of the situation and the large number of requests, several earlier drafts of this teshuvah were distributed for review and practical guidance. Those who have been acting on earlier versions are urged to review this version, which addresses a number of issues not covered in those earlier versions.

While this paper spends significant time addressing the acute needs of the current situation, we also understand that eventually a “new normal” will emerge. By that time, societal norms and expectations, as well as the range of available technical solutions, may have evolved significantly. The paper’s conclusions must therefore be reassessed we approach that time.

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

<sup>1</sup>This Teshuvah was originally submitted before the COVID-19 pandemic, and has undergone significant revision reflecting the impact of the pandemic. I am grateful to many colleagues who offered useful feedback, or whose thoughts influenced my own, including Rabbis Aaron Alexander, Pamela Barmash, Elliot Dorf, David Fine, David Golinkin, Steven Kane, Jan Caryl Kaufman, Hillel Konigsburg, Amy Levin, David Novack, Danny Nevins, Micah Peltz and Raysh Weiss, and Cantor Scott Sokol

## **She'elah:**

Is it permitted for a synagogue or other prayer community to offer a stream of its services on Shabbat or Yom Tov? If so, what are the concerns that must be addressed when this is done? Are the parameters for the current crisis different than they might be in more usual times?

## **Teshuvah:**

While some congregations had already begun offering streaming services before 2020, the COVID-19 pandemic and the total disruption of in-person communal worship in most of the world, led many more congregations that had not been doing so to dive headlong into creating virtual prayer spaces. Until COVID-19, most synagogues that were offering virtual access were using a transmission method that was essentially one-way, through a streaming service like StreamSpot, YouTube or Facebook Live. In many places, gathering even a small group for prayer became unsafe or illegal, prompting many more communities to adopt interactive means like Zoom or Google Meet. Some offered both one-way and multi-way options. In addition, some streams are publicly accessible, while others are password protected. Some communities also record these streams in order to provide archives of past services.

Some congregations, appropriately concerned about possible violations of Shabbat and Yom tov, have offered services through electronic means only for weekday services, Kabbalat Shabbat or Havdallah. They may find the pressure harder to resist in the longer term, particularly for High Holidays 5781. There will also be significant pressure to continue some type of streaming option even after the current crisis. Meanwhile, the floodgates have been opened, not just for congregations, but for families and individuals who are considering the use of technology on Shabbat or Yom Tov in ways that they might not have done previously. Indeed, while Passover 2020 was the year of the “Zoom Seder,”<sup>2</sup> it is fair to assume that families will be considering similar arrangements long after the COVID-19 crisis is behind us.

The remainder of this Teshuvah is divided into nine sections:

- I. Why this Teshuvah is necessary.
- II. A review of issues related to streaming on weekdays, or within one location on shabbat, already addressed by CJLS opinions, with additional expansion on the question of reliance on non-Jews to manage the equipment, and of fulfilling one's obligations through a video connection.
- III. Potential violations of Shabbat and Yom Tov involved in streaming, and their mitigation.
- IV. The permissibility of streaming if left on before Shabbat or activated via timer.
- V. Tempting or encouraging others to violate Shabbat.
- VI. Recording
- VII. Larger communal implications.
- VIII. Conclusions and Psak
- IX. A Technical Appendix

### **I. Why This Teshuvah is Necessary:**

The question of whether may one's fulfill one's ritual obligations or constitute a minyan through a group joined together through various technological means has already been addressed in other RA teshuvot and temporary directives. In this paper, I will take those conclusions largely as a given and focus on the specific questions and challenges related to virtual services on Shabbat and Yom Tov. There are two primary categories of technology that are in wide use:

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<sup>2</sup> <https://www.rabbinicalassembly.org/story/streaming-seder>

1. One-way technologies like StreamSpot ,YouTube live or Facebook live. Activities are transmitted from a single, central location, and those engaging at other locations are passive viewers, though they may have the ability to post through written chat.
2. Multi-way technologies like Zoom and Google Meet, where participants in multiple locations can see, hear and interact with each other.

In addition, there are hybrid approaches. For example, some congregations use a Zoom conference to bring together participants in several places, and then stream the resulting combined images via a service like Facebook live, or YouTube Live

There are some ways to enable “virtual” participation in religious ritual on Shabbat and Holidays that are solidly within the letter of Jewish law, though admittedly, their widespread implementation poses challenges to its spirit. Other methods may be more or less viable based on one’s understanding of the nature of electricity and electronic devices. There are still other modes that might not be accommodated within the *daled amot* of *halakha*, but might seem unavoidable to a particular community given their circumstances. In such cases we cannot encourage their use, but we can offer suggestions as to how to mitigate potential violations.

It is worth noting that while there is a rabbinic injunction to pray with a minyan, it is entirely permissible to pray without one. One is not obligated to travel more than a certain distance in search of a minyan.<sup>3</sup> If one cannot recite the prayers in Hebrew without the support of others, one may still pray in any language that one understands. One should certainly not risk one’s life or violate other prohibitions in order to participate in a minyan. Similarly, seder may be held alone,<sup>4</sup> and there are many ways to commemorate a loss other than recitation of Kaddish, including study and acts of charity. Could we not encourage people to pray as individuals at home? Indeed, even the most regular davener has certainly missed attending services with a minyan, due to illness, travel, or personal choice, and has had the opportunity to pray individually. However, there are certain rituals, like hearing shofar and megillah, that have greater *halakhic* implications than simply praying without a minyan. Others, like mourner’s kaddish and yizkor, may have alternatives<sup>5</sup> that could be adopted with minimal *halakhic* challenge, but their normal format has profound emotional impact.

It must also be pointed out that there are six other days of the week on which there are much lower halakhic barriers to using technology. Why not focus our energies on those days, and preserve the sanctity of Shabbat and Yom Tov as “screen free” times? There is certainly an argument to be made in this direction, and some communities may choose to offer kabbalat shabbat and havdalah and leave Shabbat intact. However, for most Jews, communal prayers on Shabbat and holidays (to say nothing of the High Holidays) are a central focus of the prayer experience, and it may not be possible to shift this focus.

Many Jewish communities around the world are still in the process of emerging from a period of weeks or even longer when it has been totally impossible to bring together a minyan in person, due to medical realities or local government policy.<sup>6</sup> However, even when this phase ends, the period of

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<sup>3</sup> Cf Shulhan Aruch 90:16, and Mishneh Berurah 90:52.

<sup>4</sup> Cf Maimonides, Mishneh Torah *H*ametz and Matzah, 7:3.

<sup>5</sup> For example, <https://www.rabbinicalassembly.org/story/prayer-when-there-no-minyan-say-kaddish>

<sup>6</sup> We will take as a given that the principle of *dina d’malhuta dina*, which declares that the law of the land is binding upon the Jewish community, does not apply to decrees specifically designed to disrupt Jewish practice, but does apply to rules which may have that side effect if they are made by legitimate authorities, for the public good. Jews and Jewish institutions must comply with local ordinances intended to protect the community from COVID.

disruption will last much longer for most congregations, extending far beyond the High Holidays 5781. During these times, only relatively small crowds will be able to gather in person, and significant segments of the community (those over a certain age, or with medical conditions) will be excluded. Some individuals and communities will be willing to forgo communal prayer on Shabbat for the duration of the crisis, but others will not. Many congregations will find that there is no practical way to accommodate their community for the High Holidays in the physical spaces available, even with shifts and precautions. For these congregations, leaving a significant portion of their community without access to public prayer on the High Holidays is likely to be untenable. Jewish law contemplates the category of *she'at hadehak*, a “pressured time” of truly unusual circumstances. In such a situation, the law is not abrogated, but where one may rely on minority views<sup>7</sup> that would normally not be applied, or take unusual steps to preserve human dignity in the absence of a tenable alternative.<sup>8</sup>

Nevertheless, is it necessary to risk serious violations of the letter and spirit of Shabbat in order to enable participation in religious practices which are laudatory, but ordinarily would not supersede a Biblical prohibition?

During the current crisis, many have justified particular decisions relying on the *halakhic* principle of *pikuah nefesh*, which allows for active violation of almost any commandment in order to save a life, even if there is only suspected risk. For example, one can, and indeed must violate Shabbat if necessary to obtain or provide urgent medical care. There is also a category of *sakanat nefashot*, the requirement to avoid activities which might endanger human life.<sup>9</sup> While both categories are quite expansive, they can be overused. Do they apply here?

We have seen that the desire of Jews to participate in communal prayer is so great that they have sought to attend services in person, against legal prohibitions and the advice of medical experts. In doing so, they may have risked their own health and safety, or they may have ignored their own possible disease symptoms or previous exposure and in doing so risked the lives of all others attending, creating a real situation of *sakanat nefashot*. While such situations have stereotypically been associated with specific sub-segments of the *Hareidi* community, I have already been witness to members of my own congregation seeking such participation as well.

Rabbi David Schuck, who led one of the first congregations closed by a COVID outbreak, has pointed out that there is a “safe” solution to problem of *sakanat nefashot*. One can simply avoid the dangerous activity. Congregations could remain closed to physical gatherings, without offering Shabbat or High Holiday services, until the level of risk is low enough that the category of *sakanat nefashot* no longer applies. Some congregations may be able to follow this path for longer than others.

However, as other venues in the larger community, including other houses of worship, begin to return to physical gatherings, synagogue clergy and lay leaders will feel significant pressure to follow suit and “open up,” whether or not such a choice is medically appropriate for their own congregations. As some business owners have done, they may also downplay risks out of concern that the continued survival of their institutions depends on reopening. Individual clergy will feel pressure to attend worship in person even if they or their families are at heightened risk, or if they do not feel well on a particular day.

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<sup>7</sup> Cf TB Berakhot 9a, Eruvin 46a.

<sup>8</sup> See Rema on Shulhan Arukh OH 339:4 for a dramatic case.

<sup>9</sup> Cf Rema on Shulhan Arukh YD 116:5, who codifies the view also found in the Talmud that a even a potential danger is to be considered more seriously than a potential prohibition.

Even if it is theoretically safe for institutions to open, individual non-compliance will still present a challenge. Even if temperatures are taken at the door of the synagogue, if someone develops a fever the night before a family *simha*, will they stay home or will they take Tylenol and hope for the best? As such, it is not an exaggeration to say that in the current crisis, allowing a socially and *halakhically* acceptable technological alternative to in-person attendance is truly a matter of *pikuah nefesh* for members and leaders of a community. It is not hyperbole to state that even with precautions in place, an infected but asymptomatic service attendee, with no malicious intent, could cause as many casualties as an armed attacker. Allowing for on line participation provides an important escape valve to reduce this pressure to make risky choices

In addition, there are concerns of mental health that may be harder to quantify as *pikuach nefesh* in the classic sense, but deserve consideration for their potential harm to the well-being of the more fragile in our community. There is a strong thread within the tradition that sees mental anguish as sufficient justification to override Shabbat prohibitions. There are many sources that permit violating Shabbat in order to provide emotional comfort for one facing a life-threatening illness, even if those interventions have no immediate medical benefit.<sup>10</sup> While most people who might access a stream are not ill at a life-threatening level, there is also precedent for setting aside some Shabbat and Yom Tov prohibitions for the sake of those experiencing severe emotional distress, even in the absence of immediate physical danger. The Talmud<sup>11</sup> notes that not only may one violate Shabbat to rescue a child from a physical danger like drowning or being trapped in a pit, one may also break down a door in violation of Shabbat if a child is merely trapped in a room, a case where there is no immediate physical risk, only emotional distress. Rabbi Yitzhak Ya'akov Weiss<sup>12</sup> offers a striking analysis of the issue of emotional distress caused by not fulfilling a mitzvah. He addresses a case where a person who is afflicted with a contagious disease wants to bring his tefillin with him to the hospital even though this will result in the destruction of the tefillin. He concludes that it is permitted to bring the tefillin, despite the fact that they will almost certainly be destroyed (which is prohibited) because the emotional distress may result in physical harm. We also note that over the three day Yom Tov of Passover 5780, many rabbis who would normally forbid telephone use on Shabbat or Yom Tov permitted it so that people who lived alone not be isolated. While many people can manage 24 hours without human contact, having that happen every week would cause a greater degree of distress.

Even before this crisis, there were always those who by virtue of health or other challenges were unable to join a community for in person prayer for long periods of time. There is significant research that regular attendance at religious worship has psychological benefits,<sup>13</sup> and while that research has not been extended to remote participation in services, anecdotal evidence suggests that for those who are home-bound, being able to experience communal worship, even to the limited extent enabled by virtual means, is a tremendous source of comfort and encouragement. There may be particular benefits for those using a multi-way system that allows members of the community to see each other and interact, though obviously those opportunities could also be

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<sup>10</sup> For example, Tur OH 330:1, which allows lighting a candle on shabbat for a woman post-partum even if she is blind, and Shulhan Arukh OH 306:9, regarding sending a non-Jewish messenger on shabbat to bring relatives of a seriously ill person. Some later *poskim* allow travelling on Shabbat to be emotionally present for a person who is ill. Or see Shulhan Arukh HM 254:1 regarding carrying out financial transactions on Shabbat to put a dying person at ease.

<sup>11</sup> TB Yoma 84b.

<sup>12</sup> *Minhat Yitzhak* 4:8.

<sup>13</sup> [Association between Religious Service Attendance and Lower Suicide Rates among US Women, JAMA Psychiatry](#). 2016;73(8):845-851.

created during the week. However, Shabbat and holidays have a special place in the Jewish heart. Prolonged, enforced absence from this worship, or being excluded from a unique lifecycle milestone, may have more serious negative psychological effects.

There are many reasons why individuals seek a live community for prayer. We may not feel that all of these reasons are sufficient to justify the risks to the spirit or observance of Shabbat and Yom Tov, but it is important to consider their role in motivating the members of our communities.

1. Participation in those parts of the service which cannot be performed as an individual: *devarim shebikedushah*, those prayers which require a minyan and the formal reading of the Torah.
2. Experiencing rituals which can in theory be done without a minyan but may require skills often only found in community (hearing shofar, experiencing the reading of the megillah)
3. There are those who do not feel comfortable navigating the entire service on their own, despite the ready availability of prayerbooks with translation and transliteration, and wish to rely on hearing the recitation of the service, or at the very least having the “stage direction” associated with an organized service.
4. A desire to witness a particular *simḥah* celebration taking place in that community
5. Wanting to hear the sermon or teaching taking place as part of the service.
6. The sense of inspiration that comes from being in community.
7. The desire for a social connection, including the informal connections that take place both during the service and in a *kiddush* or *oneg* that might follow.<sup>14</sup>

Any or all of these reasons (except for perhaps the last) may motivate someone seeking to watch a streamed service.

There are other reasons as well, which, on their own, might not have been enough to justify a change in practice but which some congregations are taking into consideration. Some may wish to “witness” a *simḥah* taking place in another city.<sup>15</sup> Even before this crisis there were already Jews who were seeking streaming out of convenience. Even in the absence of medical risk or physical limitation, some would rather not have to leave home to have a prayer experience. This is no different. Many more people watch sports on television than attend in person. Alternatively, they may want to be able to sample services beyond what is available in their own communities.<sup>16</sup>

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<sup>14</sup> This is one aspect of participation in communal prayer that is not to be underestimated. There is, as of yet, no way to deliver the full *kiddush* experience remotely, but many congregations leave their live conference on before and after the service for people to socialize. Epidemiologists have noted that it is also harder to implement physical social distancing in a *kiddush* setting than in a service.

<sup>15</sup> In the current situation, some have suggested that air travel may be a higher risk activity, with implications for potential participation in group activities immediately upon arrival.

<sup>16</sup> I spoke to one individual who watches parts of up to 6 different services on a single Shabbat. While the desire to fill Shabbat with worship and study experiences is commendable, it clearly exceeds what would be defined as “need.”

## II. Issues already addressed by the CJLS

### A. May one fulfill one's obligation to pray by hearing or responding to prayers transmitted electronically?

Rabbi Avram Reisner<sup>17</sup> established that it is permitted to participate in services via a real-time audio connection. In doing so, one may participate in the recitation of those prayers that require the presence of a minyan, including mourner's kaddish. One may also fulfill one's obligation to pray by responding amen to prayers heard in this manner. He cites and analyzes important precedents, including the many views summarized by R. Eliezer Waldenberg.<sup>18</sup>

Rabbi Reisner's teshuvah assumes that the challenge of doing so on Shabbat may be overcome but does not attempt to address it:

This raises the matter of the use of electronic appliances on Shabbat. Clearly, use of a computer will require not only turning it on, but manipulating it and dialing into the phone line. All those issues *may be resolved with careful consideration of the laws concerning the use of electricity on Shabbat* and need not detain us here.<sup>19</sup>

One important limitation of Reisner's approach is that a minyan of at least 10 must be constituted in person, and then others may participate remotely. While the preference is for a two-way connection, where those participating remotely can also be seen and heard by those at the central location, he argues that a one-way connection would also be sufficient for one to fulfill the obligation, and that one who is listening to such a service can recite mourner's kaddish even if they cannot be heard by the minyan, so long as the kaddish is also recited by someone who can be heard by the minyan. Even though the mourner would technically be the "*shaliach tzibbur*," we understand that even in a live minyan, those whose recitation is not heard distinctly are still considered to have said kaddish.

A few members of the CJLS have offered temporary guidance that allows for more lenient approaches during a time of global pandemic, when gathering 10 people together in one place is unsafe and/or illegal in many communities<sup>20</sup>. This *hora'at sha'ah*<sup>21</sup>, which was not accepted by the majority, suggests the possibility of constituting a minyan via a multi-way visual and audio connection so that at least 10 participants can see and hear each other.<sup>22</sup> As a result, this approach requires a video conferencing solution, rather than a one-way streaming solution. This *hora'at sha'ah* permission to constitute a minyan entirely via video link, is based on a previous precedent from an earlier plague situation<sup>23</sup>, and would not apply under circumstances other than quarantine.

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<sup>17</sup> Rabbi Avram Reisner, "[Wired to the Kadosh Baruch Hu: Minyan Via Internet](#)" OH 55:15.2001.

<sup>18</sup> Tzitz Eliezer 8:11.

<sup>19</sup> Reisner, endnote 8.

<sup>20</sup> <https://www.rabbinicalassembly.org/story/cjls-guidance-remote-minyanim-time-covid-19>

<sup>21</sup> A *hora'at sha'ah* is a leniency that bends the rules as required to address a single, extraordinary circumstance, and does not create a precedent. In contrast, a *sha'at hadehak* ruling relies on less commonly accepted precedents in pressing, but not necessarily unique circumstances.

<sup>22</sup> Further guidance on the parameters and limitations of this practice are forthcoming.

<sup>23</sup> Rabbi Daniel Nevins has pointed to one precedent for this situation, found in the 18<sup>th</sup> century [Rabbi Haim Yosef David Azulai, Mahazik Brakhah](#) OH 55:11, with reference to clusters of fewer than ten Jews confined to quarantine houses who can show their faces to each other out the window or door and combine to form a minyan, "lest forty days be lost without kaddish or kedushah."

**B. May a service be transmitted on Shabbat if the transmitting and receiving system were already set before Shabbat? (with particular attention to the question of *Amirah L'Akum*).**

In 1989, the CJLS overwhelmingly approved a teshuvah by Rabbi Gordon Tucker<sup>24</sup> which concluded that it was permissible to offer a video/audio feed of a Shabbat or Yom Tov service in another room in a particular facility, or indeed, in a different facility, with the following caveats:

It should be permitted, provided that (1) no permanent tape is made in the process, (2) the equipment is set up before Shabbat or Yom Tov, and either turned on or placed on a timer, (3) the equipment is either inaccessible to adjustment or repair, or is placed in the skilled hands of a non-Jew in the employ of the synagogue, and (4) there is no noticeable distortion in the visual or sound components of the system.

As of 2020, many one-way digital streaming systems can be set up to operate for 24 hours or more without human intervention, or to begin streaming automatically at a particular time<sup>25</sup>. These systems can provide audio and video at a higher level of fidelity than that available even for in-house closed-circuit systems 30 years ago. A concern that must be addressed is that many congregations, in pursuit of a “broadcast quality” experience for viewers, have a live professional actively operating the feed. For a one-way stream, this technician may be adjusting sound levels, and switching the broadcast from one camera to another based on what is happening in the service. On a Zoom or multi-way system, the technician may be called upon to spotlight or mute particular speakers. For security purposes, many congregations using Zoom make use of the “waiting room” feature, which requires real-time monitoring as well. I want to emphasize Rabbi Tucker’s point, that, in the absence of having someone who is not Jewish designated to deal with these issues, there is a very high risk that a Jewish person will step in, and violate not only rabbinic, but biblical prohibitions. Therefore it is strongly urged that if these systems are considered “too important to fail,” that a non-Jewish person be tasked with monitoring them.<sup>26</sup>

The question of *amirah l'akum* (relying on labor performed by a non-Jewish person on Shabbat) is complex<sup>27</sup>, and has not been addressed in a comprehensive way by the CJLS, and requires some analysis. There is a range of views as to under what conditions one may benefit from the work of non-Jews on Shabbat or other holy days. Those who permit it generally do so only when one (or ideally more than one) of the following exemptions apply:

1. The non-Jewish person is performing duties as they would normally perform them during the week.
2. The non-Jewish person is doing so without specific direction on Shabbat from a Jewish person.
3. The labor can be considered to be for the benefit of the one doing it, rather than for the Jewish person.
4. The labor is only a violation of rabbinic decree, rather than Torah law.
5. The benefit is only experienced after Shabbat ends.

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<sup>24</sup> Rabbi Gordon Tucker, “[The Use of a Remote Audio and Video Monitor on Shabbat and Yom Tov](#),” OH 340:3.1989a.

<sup>25</sup> See the appendices.

<sup>26</sup> I recognize that this recommendation may be less practical for communities in Israel, and for smaller prayer communities that do not have non-Jewish staff, but these communities may be more readily able to rely on other solutions, or make a special arrangement for the High Holidays if needed.

<sup>27</sup> See Jacob Katz, [The Shabbes Goy: A Study in Halakhic Flexibility](#) (Philadelphia: Jewish Publication Society, 1989).

Many congregations already arrange for non-Jewish staff to be present to perform tasks like turning on lights, monitoring a basic sound system, warming food or preparing coffee.<sup>28</sup> A regular non-Jewish employee of the congregation who tends to the equipment based on instructions given during the week, without specific direction on the holy day, performing only tasks that would be violations of rabbinic law, would be easy to justify.

Conversely, a technician who is only present for Shabbat and holiday services, and is writing and recording in response to real-time direct instructions from those organizing the service would not meet these criteria, and would be more problematic.

The individual *mara d'atra* is best qualified to determine exactly how these exemptions are best applied in their own community in a way that is consistent with their current approach to labor performed by non-Jewish people. As a general recommendation, even if one believes that it is technically permitted for a non-Jewish person to activate the streaming process on Shabbat, it is strongly preferable for the system to activate automatically through a process set in motion before Shabbat, rather than to rely on a non-Jewish person doing so on Shabbat, in case any step of activating the system involves a violation of Torah law.

It is also worth noting the non-Jewish employee might not be in the same location as those conducting the service, which could create both challenges and opportunities.<sup>29</sup>

Is it reasonable to permit streaming, while creating restrictions that would limit its convenience and quality (for example not having cameras pan and zoom, or not allowing recording)? Not intervening if the Zoom focuses on someone other than the intended leader? How willing is the congregation to tolerate the possibility that the system might fail and might require significant repair on Shabbat or the holiday itself in order to return to function? Perhaps a parallel would be the restrictions surrounding cooking on Shabbat. It is permitted to cook food before Shabbat and keep it warm, or (under limited circumstances) reheat it to serve on Shabbat. Observant communities and individual Jews understand that some menu items may not be practical for a Shabbat meal. Communities that seek to do so within the bounds of halakha must accept that there may be some limitations in the quality and reliability of the experience.

### **C. Fulfilling Obligations that Require “Hearing” through Electronic Means**

Rabbi Tucker also notes that there are several obligations which, according to some threads of interpretation, must be fulfilled by hearing a sound directly, rather than through an intermediate source. The classic one would be the shofar. One must hear the original sound. If one hears the sound of the shofar as an echo after it is blown into a pit, one does not fulfill one's obligation.<sup>30</sup> Many *poskim* therefore conclude that a mechanically or electronically transmitted version would not suffice, and indeed, from a *halakhic* perspective, it is strongly preferable to hear the sound of the shofar truly live<sup>31</sup>. In some communities it will be possible to organize and train a corps of shofar blowers who are able to travel in a *yom tov* appropriate way to blow shofar for people in person near their homes, and this is the preferred solution under normal circumstances.

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<sup>28</sup> While the topic of coffee preparation on Shabbat is beyond the scope of this paper, a community's approach to this question is a good yardstick of its *halakhic* flexibility in the face of communal demand.

<sup>29</sup> One question that I leave unanswered, but that is worth exploring, is the question of such work being done by a Jewish person located in a time zone where it is not Shabbat or Yom Tov.

<sup>30</sup> TB Rosh Hashanah 27b-28a, Shulhan Arukh 284:5, Arukh HaShulhan OH 59:13,

<sup>31</sup> In my own congregation I had always ensured that the shofar was sounded far from any microphone so that those present could hear it even without relying on the sound system.

For 5781, there are specific concerns that must be addressed. There is some evidence that shofar blowing may be a particularly high risk activity. Research with other similar instruments suggests that horns may transmit over 200 times as many infectious particles as shouting<sup>32</sup>, so during COVID-19 times, competent current advice must be consulted as to whether and how shofar may be sounded safely in an enclosed space, or even outdoors. Rabbi Tucker cites a few *poskim* who permit hearing a shofar through electronic means. In particular, Rabbi Eliezer Waldenberg<sup>33</sup> allowed fulfilling these mitzvot and others via electronic transmission, and in time of danger, these opinions may be relied upon if the alternative would be not hearing the shofar at all.

One important challenge is that some multi-way systems, like Zoom, are more likely to introduce gaps or distortion into the signal, in particular when several speakers or sounds are active at once in different locations. The rabbinic principle of *trei kalei la mishtamei*, (two voices cannot be heard at once)<sup>34</sup> which is sometimes downplayed when a congregation is all found in one location and *de facto* multiple voices or sounds can be distinguished, becomes of even greater concern with this technology, where sounds may drown each other out or become indistinguishable. It is particularly important that for the required Rosh Hashanah blasts, only one shofar be sounded at a time, but this principle should be taken into account for prayer as well for those prayers where the congregation relies on the reader's recitation. Participants at other locations should be guided to be silent or hushed while the leader is singing, or be muted in a halakhically manageable way, so that the leader can be heard clearly.

The committee has not addressed the idea of the priestly blessing (*dukhening*) through a video link, but it would seem that congregations that normally include this practice in person may also do so remotely. The Kohanim may bless the congregation from wherever they are as long as a minyan has been constituted.<sup>35</sup> The Shulhan Arukh<sup>36</sup> offers a beautiful expression of this idea:

The people who are behind the Kohanim are not included in the blessing, but those before them and to the sides, even an iron curtain does not interrupt between them. And even if they are behind the Kohanim, if it is because they are forced (for instance, if they are overwhelmed with work in the fields and they cannot come) they are included in the blessing.

Some congregations may also make available pre-recorded videos of prayer or study. One may rely on such a video to support one's own prayer or study, but one cannot rely on the leader pictured in such a video as a *shaliah tzibbur*, or rely on a minyan recorded in such a video in order to recite kaddish or other prayers requiring a minyan. Similarly, hearing a recording of a shofar or megillah would not enable one to fulfill one's obligations. The concerns with a user activating such a video on Shabbat or Yom Tov are largely equivalent from those involved in a user logging into a live stream or conference.

The teshuvot of Rabbis Tucker and Reisner address many of the concerns regarding live streaming on Shabbat and Yom Tov. However, current technological and sociological trends go far beyond the conclusions of the existing CJLS teshuvot, in several key ways, and we will address each of these concerns in turn.

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<sup>32</sup> Kan Ma Lai, Christian Bottomley, and Ruth McNerny, "Propagation of Respirator Aerosols by the Vuvuzela, 20011. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3100331/>.

<sup>33</sup> Tzitz Eliezer 8:11.

<sup>34</sup> TB Rosh Hashanah 27a.

<sup>35</sup> Cf TB Berakhot 16a.

<sup>36</sup> Shulhan Arukh OH 128:24.

### III. Potential Violations of Shabbat In Streaming on Shabbat , and their Mitigation

Streams would typically be accessed through a computer, tablet, or phone, or a “Smart TV.” A Smart TV is functionally equivalent to a tablet or computer given that one can navigate through a graphical interface, and even “type” with the remote to enter text. One can search for and purchase content. What prohibitions are involved in interacting with such electronic device on Shabbat?

Rabbi Daniel Nevins has already covered this topic in great depth in his comprehensive paper on electricity and electronics on Shabbat.<sup>37</sup> In order to be forbidden on Shabbat, an activity must be forbidden either at a biblical level, because it falls into one of 39 categories of forbidden labor, or on a rabbinic level because it is similar to one of these labors, or might lead to the performance of one of these labors. Since the use of electrical devices began to spread in the late 19<sup>th</sup> century, *poskim* have often ruled against the use of electricity on Shabbat, but rarely agreed as why. Some have suggested that it is either *mavir* (lighting a fire), *boneh* (building or assembling parts into a whole), *makeh b'patish*, (taking the final act to complete a creative process) or its sub-category, *mitakein mana*, (preparing a utensil for use), or *bishul* (heating something to a temperature hot enough to cook). Others have suggested that it is a violation of rabbinic prohibitions including *molid* (transforming something by infusing it with another substance). Nevins reviews these claims and argues, following the lead of Arthur Neulander’s 1950 CJLS responsum, that electricity, in and of itself, is not forbidden on Shabbat, but entails a violation when it is used for a forbidden purpose, like cooking.

What forbidden labor is involved in accessing a stream through an electronic device? Rabbi Nevins makes a strong argument that the use of computers, internet-connected tablets, and cellphones on Shabbat though not falling into one of the categories already mentioned,<sup>38</sup> should generally be considered to be prohibited. To summarize his approach: *Koteiv*, writing, is one of the 39 categories of labor prohibited on Shabbat, and at its core requires the writing of two or more letters in a way that will endure. Causing letters to appear on the screen of an electronic device is not *koteiv* in the classic sense, because the letters on the screen itself are not permanent. Similarly, typing on a physical or virtual keyboard is not the same as writing. However, any biblically mandated labor is also considered to have *toledot*: derivative activities that may have a different physical process, but have the same purpose and result, and are therefore forbidden. Typing something on a computer or a phone may engage a very different physical process than writing with pen and paper, but accomplishes the same intended result, of creating a permanent record. Rabbi Nevins argues that this is true even if one uses the device without actually typing, since the device, and the internet servers to which it connects, make a permanent record of one’s actions, and thus would be *toledat koteiv*.

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*.

Some have tried to argue that *koteiv* is not a factor because typing on an electronic device is not considered permanent because the letters disappear, or that indeed, it is possible to use such devices without typing at all, (for example, by clicking an existing bookmark, or using a voice-

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<sup>37</sup> Rabbi Daniel Nevins, "[The Use of Electrical and Electronic Devices on Shabbat](#)" OH 305:18.2012a

<sup>38</sup>If the device has already been configured and is already ready for typical use, then actually enabling that use is not *boneh* or *makeh b'patish*. These categories may become relevant if a device needs to be rebooted, configured or repaired. An electronic device may generate heat, but this is not a desired effect, and may or may not be increased by the device’s use, and should not be considered *bishul*, cooking.

activated assistant) and that any permanent record being made is a side-effect, and not the desired outcome. If one held such a view, one might take a more lenient view on some of the argumentation that follows. However, even if one were to follow this line of reasoning, there is a category of Shabbat prohibition called *shvut*, which encompasses activities that are not a violation of the biblical prohibition, but were prohibited by rabbinic decree, because they either

1. Might tempt one to violate Shabbat (one might be drawn to print something out or make a purchase, or one might need to plug in or unplug a device).
2. Are similar to a biblically prohibited activity, but differ enough in purpose or result that they are not considered *toledah* (so, for example the only writing that is prohibited biblically is that which is permanent. Non-permanent writing is prohibited as a *shvut*).
3. Are not in keeping with the restful spirit of Shabbat. (For example, watching television programs of secular content, or doing something similar to one's weekday labor).

Many video systems have the capability to transmit text via chat. During the week, this can be useful for side-conversations that do not disrupt the *tefillah*. However, on Shabbat, having a Jewish person using this feature runs afoul of *koteiv*, intentionally causing words to appear, at the very least on a rabbinic level. If the chat is permanently preserved, then it may well be on a biblical level. If it is technically possible to do so, chat should be disabled on Shabbat. Similarly, many video systems have the ability to share a screen image. This feature is incredibly useful when siddurim and chumashim are not available to viewers, or for text teaching. Is this permitted on Shabbat or Yom Tov? Since the words will definitely not remain on screen (and indeed, it is permitted, during the week, to “erase” them, which would not be the case if they were truly writing), screen sharing is not *koteiv* on a Biblical level, but nevertheless, the intent to make words appear probably falls afoul of this prohibition on a rabbinic level.

There is a further concern, the rabbinic prohibition of *hashma'at kol*- creating a noise on Shabbat with a device specifically designed for this purpose, even a door knocker!<sup>39</sup> This is one of several reasons why traditional sources forbid the use of a microphone<sup>40</sup>. A common Conservative practice<sup>41</sup> is to allow one's voice to be transmitted by a microphone that is already activated, but not to activate a microphone that was previous turned off. The parallel case would be that one could speak into a transmitting device that was already active, but that directly activating a stream with audio on Shabbat through an electronic device could violate this prohibition of *hashma'at kol*.

In general, it does not matter whether an activity on Shabbat is forbidden by Biblical or Rabbinic decree. It is forbidden. However, in some cases, the type of prohibition determines the circumstances where that prohibition may be overridden. In a situation of true *pikuah nefesh* (where a person is truly at risk of death due to illness), one may violate even a Biblical commandment. 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).

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<sup>39</sup> Shulhan Arukh OH 338:1.

<sup>40</sup> One of the other objections to the microphone is that older microphone technology, (still used in some high-end microphones) actually creates a current that is actually generated by the sound of the speaker. However, the microphones found in most consumer products typically use a continuous flow of current that never stops as long as the device is turned on, and is only modified by the sound being picked up.

<sup>41</sup> Based on an opinion of the chair of the CJLS 05/19/1976, and further confirmed by Nevins in “Electricity,” p. 48.

I will present several examples of modes of interaction with electronics that would be problematic under normal circumstances, with possible exceptions or loopholes that could be used under particularly unusual or pressing circumstances, and might be considered only in the current crisis. Rabbis may want to advise members of their own communities how best to apply these leniencies, given the particular technology in use and the severity of the particular situation.

One such leniency is *grama*, an indirect action. Many home devices can be controlled through voice-activated assistants. In his paper on artificial intelligence,<sup>42</sup> Rabbi Nevins considers the possibility that interacting with a device through such an assistant would be conceptually different from interacting by typing, swiping or clicking, which are either *toledat koteiv* or *shvut*. He wonders whether a voice command might fall into the category of *grama*, because the computer relies on significant external information from the network to interpret spoken commands, making this interaction less direct than keyed commands. The end result of the voice command might be an outcome that would normally be considered a violation of Shabbat, but because the voice system has a high degree of autonomy in interpreting the command, the connection between the user's action and that end result is tenuous enough that the user cannot be considered "at fault" for that end result. Ultimately, Nevins concludes that using a personal assistant in this manner would in any case be considered *shvut*, because even if it is not technically in violation of Shabbat, it leads to results that are not in the spirit of the day. However, in a case of true need (a person with an illness or a disability which affects their dignity), the use of a voice-activated system to turn on a stream would clearly be permitted. Doing so for a person who is well might technically be permitted but would be discouraged.

Unmuting one's microphone might also fall into the category of *grama*, indirect action. Even when zoom is muted, the microphone is still active with current flowing, and the application is still "listening." Unmuting (especially while the user is quiet) simply allows the already existing signal to go to the main server, but does not immediately dictate that anything will be heard by the other users. That server might wait for an unpredictable amount of time, taking into account what other noise is being made, before deciding to focus on that user's signal and transmit it to the other listeners. Muting one's microphone may pose even less of an issue, since stopping a sound on Shabbat is not prohibited.

Another task that is commonly performed with Zoom is shifting focus to a particular speaker or location. Speaking in a way that causes one's self to be spotlighted automatically by the zoom server can be considered to be *grama*, because the algorithm that performs this task will usually respond to whoever is speaking, but often does so after a lag, and not always in a predictable fashion.

However, sometimes this feature does not work properly, and one might feel the need to highlight a particular speaker manually by using the "spotlight" function. This is probably a *shvut*. Or, if one is attempting to constitute a minyan using the temporary permission for constituting a minyan via zoom when in-person minyanim are forbidden, one must be able to see the other participants, which means that at the minimum, the shaliach tzibbur, and possibly other participants as well<sup>43</sup> must switch into grid view in order for the service to continue. In these cases, the interaction is direct, and we cannot rely on *grama*.

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<sup>42</sup> Rabbi Daniel Nevins, "[Halakhic Responses to Artificial Intelligence and Autonomous Machines](#)" HM182.

<sup>43</sup> The "Zoom minyan" position as originally constituted assumed that all 10 must all be able to see and hear each other, but does not address whether it is sufficient for the *Shatz* to see 10 others who see the *shatz*. Further clarification is forthcoming.

These direct interactions with device that are necessary on Zoom might be considered *makeh b'patish* (striking the final hammer blow) or *metaken mana* (fixing something) because they are making the computer “fit to use.” I would note that *metaken mana* typically implies the permanent completion of an object. Spotlighting and similar actions may not be considered *makeh b'patish* at the Biblical level, because they are part of the regular use of the program and may be set and unset multiple times during its regular use.

However, another approach that could be used in such situations is performing the task *k'leahar yad* (in an unusual way, literally with the back of the hand) For example, Rabbi Moshe Isserles<sup>44</sup>, discusses the case of a sealed hot oven which must be opened and resealed on Shabbat. He suggests that the most preferable option is to ask a non-Jew. If this is not possible, to have it done by a child, and if this is not possible either to do it “in an unusual way.” We hesitate to recommend depending on a child to operate one’s electronics on Shabbat, because this will further habituate them to doing so.

We may rely on Isserles’ precedent that in a case of potential significant loss one may perform labor *k'leahar yad* to prevent that loss,<sup>45</sup> since even work that is Biblically prohibited becomes only rabbinically prohibited if done in an unusual, less effective way. We can not consider the use of an electronic device to be *k'leachar yad*, in and of itself, since electronic devices are now considered the “normal” way to perform many functions. However, one may interact with the device in an unusual way. For example, one might use the mouse with one’s non-dominant hand or click with one’s wrist instead of one’s finger.

There are other leniencies that arise specifically for Yom Tov (other than Yom Kippur). Our committee has already endorsed the view that electricity is not fire, and therefore is not automatically prohibited on Shabbat, but rather it is prohibited when it is used for a forbidden purpose (cooking, writing, etc). However, those who still hold a more stringent view and do not engage with electricity at all on Shabbat may still wish to consider the view that there is cause for leniency on Yom Tov (other than Yom Kippur, which has all the stringencies of Shabbat), because a number of *melakhot*, fire in particular, are permitted if they are done to prepare food to be eaten on that day or to provide for other physical pleasures.. Rabbi David Golinkin<sup>46</sup> points to a number of North African *poskim* who forbade interacting with electricity on Shabbat, but permitted it on some forms on Yom Tov, since they considered it to be like fire, and one is allowed to transfer fire on Yom Tov. Another useful leniency is the status of second day Yom Tov, even for those who observe. There is something of a catch-22. If we do not hold that the 2<sup>nd</sup> day of Yom Tov is a full Yom Tov, then we can perform forbidden labor on that day, but one must reconsider whether we should be holding Yom Tov services or skipping positive mitzvot like tefillin on that day, and In fact, the most common view is that 2<sup>nd</sup> day Yom Tov is a *minhag*, a custom, but is observed with the same stringency as the first day of Yom Tov, as if it were *d'oraita*, of Torah origin. Nevertheless, there are those who are more lenient with 2<sup>nd</sup> day when there is a mitzvah to be observed (for example, burial is allowed on 2<sup>nd</sup> day Yom Tov).<sup>47</sup> It should be noted that this leniency does not apply to 2<sup>nd</sup> day Rosh Hashanah, which is considered to have the same status as the first day.

In summary, under normal circumstances, one should not activate a stream or interact directly with a device in other ways on Shabbat, though there are a number of leniencies that may be called upon that may apply in unusual circumstances to minimize violations.

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<sup>44</sup> Rema on Shulhan Arukh OH 259:7.

<sup>45</sup>Cf Shulhan Arukh OH 336:9, which allows clearing a drain with one’s foot.

<sup>46</sup> Rabbi David Golinkin, <https://schechter.edu/ten-brief-responsa-halakhic-reactions-to-the-corona-crisis/>

<sup>47</sup> Shulhan Arukh OH 526:4.

#### IV. The Permissibility of Viewing a Stream which has been Left on or Activated Automatically

There are, of course, ways to avoid the concern that activating a video link would be a violation of Shabbat or Yom Tov. The most obvious option would be that one might set up a computer or smart TV tuned to the stream before Shabbat, and leave it on, with screen saver disabled. This is not different from the idea of leaving a TV or radio on over Shabbat, either with the volume off, or in a room where it will not disturb one's Shabbat observance. Some *poskim*<sup>48</sup> objected strongly to this practice (or would permit only in the case of emergency<sup>49</sup>) for one of several reasons. The last is the most serious in my mind, but each of these concerns could be overcome in our case:

1. Production and transmission of the radio or TV signal might involve Jews performing forbidden labor on Shabbat. This reason would not apply if the stream were set up before Shabbat, but in an age where there are many streamed services to choose from, it is appropriate to choose one that was produced in a way that is consistent with Shabbat observance.
2. Leaving the device on would in general detract from the spirit of Shabbat, since the content is not likely to be consistent with the spirit of Shabbat. Again, this reasoning would not apply to a device which is set specifically to tune to a Shabbat or Yom Tov service, which would, we would hope, be very much in the spirit of Shabbat.
3. In addition to the prohibition that we noted above of *hashma'at kol*, using an instrument to make noise on Shabbat, there are some who prohibit allowing a device to create noise on Shabbat, even if the causative action takes place before Shabbat. This discussion originates in the Talmud<sup>50</sup> with the case of grain placed in a water mill before Shabbat. Rav forbids doing so because it will cause a diminution of Shabbat. Rav Yosef permits. There is not a consensus among Rishonim as to which view is correct. In the Shulhan Arukh<sup>51</sup>, Rabbi Yosef Karo permits placing the grain in the mill before Shabbat, taking the view that setting a process in motion before Shabbat is permitted even if it will generate noise on Shabbat. Rabbi Moshe Isserles, in his gloss, raises the concern that people who hear the noise will think that the mill-owner was actively violating Shabbat. He ultimately concludes that the very making of noise on Shabbat is itself a problem, but that whatever prohibition there might be is set aside in the case of loss. We can side with Karo, or choose the leniency of Isserles. In practice, the use of Shabbat timers and Shabbat-friendly alarm clocks is widely accepted. Rav Ovadiah Yosef<sup>52</sup> permits this practice outright. Rav Moshe Feinstein<sup>53</sup> forbids it if the noise will be heard in a large area, but permits it if it will be heard only in the room where it is located.

The use of headphones or headphone/microphone headsets, when practical,<sup>54</sup> might also be helpful for several reasons. First of all, the sound coming from the headphones is not audible even to others nearby, reducing the issue of *hashma'at kol*, whether the stream is activated on Shabbat or beforehand. Any sound created becomes more functionally similar to the case of a hearing aid,

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<sup>48</sup> Igrot Moshe OH 4:84.

<sup>49</sup> Typically, war or natural disaster, though in some communities, the local sports team being in the playoffs has also been included in this category.

<sup>50</sup> BT Shabbat 18a.

<sup>51</sup> Shulhan Arukh OH 252:5.

<sup>52</sup> Yalkut Yosef 1:89.

<sup>53</sup> Igrot Moshe OH4:70.

<sup>54</sup> Preferably wired headphones, left plugged in over Shabbat, since wireless headphones would either turn off or have to be recharged.

which is universally permitted<sup>55</sup>. Secondly, on a practical level, it decreases the disruption in the home where the computer is located, since any sounds coming through the system are barely heard unless the headset is being worn, and, if there is a two-way link, a headset microphone has more limited range and will be less likely to pick up any incidental sound to transmit back. Furthermore, other sounds and alerts that might be emitted by the device are not disruptive to the Shabbat atmosphere in the home.

4. The most serious concern is that the user would be tempted to adjust or reset the device if it is malfunctioning (*shema yitaken*). Rebooting an electronic device, changing its permanent settings, or connecting cables, could be considered to be *makeh b'patish* or *boneh* at the rabbinic, or even the Biblical level. This is a common concern even for anyone who uses a sound system on Shabbat, but is particularly serious in this case because, in the case of an electronically transmitted service, the availability of the service depends entirely on the equipment, whereas if a sound system fails in a physical building, those present might still be able to hear without the sound system.

We are able to see past this concern more easily for a service streamed from a synagogue, given the likelihood that a synagogue will have someone non-Jewish who can monitor the equipment, or that the equipment will be inaccessible to laypeople. On the receiving side, many users may not be technologically savvy, and will try to reach out on Shabbat for assistance. Participants would hopefully not text the rabbi during Shabbat services in search of technical support, but may well reach out to other staff or friends for help. Many home users will also not appreciate the nuances of Shabbat observance. They may not think twice about adjusting home equipment: "Honey, I can't get on to services. Can you reset the Wi-Fi?" They might search the web or email for the right link or password. Some of these steps are only rabbinically prohibited, or *shvut*, and there is a halakhic principle that we do not prohibit an activity as a "fence" to prevent transgressing a rabbinic decree that is already a fence,<sup>56</sup> but we must be realistic that some users will violate Shabbat in more serious ways.

Even in the absence of a malfunction, there is still a concern that viewers will be tempted to interact with the device. There is a *halakhic* category called *muktzeh*, which is designed to prevent one from interacting with objects that might lead one to violate Shabbat. An electronic device might potentially fall into two such categories.

1. *Muktzeh mahmat hesron kis*- something that it is extremely valuable and fragile, and is normally not handled idly even during the week (like a slaughterer's knife). Such objects may not be handled under almost any circumstance.
2. *Kli shemleakhto l'isur*- a tool whose usual purpose is forbidden on Shabbat. Such objects may be handled if they are redesignated for a permitted use. (For example, a hammer's use is ordinarily forbidden, but one could designate it to crack open a nutshell).

It is generally appropriate that electronic devices be considered *muktzeh*, to preserve the spirit of Shabbat and prevent their use for forbidden purposes. However, there are several leniencies that should be considered for this case:

1. *Muktzeh* applies only to moving an object not to merely touching it. For example, if someone is

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<sup>55</sup> For example, Tzitz Eliezer 6:6:15 and 9:12:1, Yabia Omer 1:19. Some note that the hearing aid is only permitted because of the issues of need and human dignity. Those issues would apply here as well for someone who was unable to attend synagogue due to illness.

<sup>56</sup> TB Shabbat 11b, 21a, Eruvin 4b, "we do not impose a *gezeirah* upon a *gezeirah*" though later *poskim* (for example Vilna Gaon, Biur Hagra OH 252) restrict the scope of this principle when the chance of a violation is high.

leaving a two-way connection on in their home over Shabbat, they could choose to put something over the camera in order to preserve privacy. Touching, but not moving the camera, would not fall afoul of *muktzeh*.

2. While some have suggested that consumer electronics are *muktzeh mahmat hesron kis*, because of their value and fragility, which would make it very difficult to justify any contact with them on Shabbat, that assessment may no longer be true. It is true that no sane person would use their phone or tablet for food preparation in the way that one might use a hammer to crack a nut.<sup>57</sup> Still, during the week, these devices are frequently carried from place to place, left out in the open in one's home, and even given to small children to use. If one is willing to accept this view, then an electronic device is still a *kli shemelakhto l'isur*, a tool whose normal use is forbidden, but such an object can be handled on Shabbat if a permitted use is designated in advance. A device which was set up in advance to enable participation in services could be moved or handled, so long as it was not manipulated for a forbidden purpose.

No matter what arguments are made regarding *muktzeh* or *k'leahar yad*, once one is interacting with electronic devices, new temptations are created. Some adjustments, like pausing, adjusting the volume, or muting, might fall into the category of *shvut*. Others (configuring a device, typing in a password) might be forbidden at a more serious level. Any computer, phone or tablet generates alerts and potential distractions. I recognize that this suggestion might not be widely adopted, but it would be preferable for users to do something that makes it clear that they are using their device in an unusual way, and discourages them from interacting with it (for example, on a computer, covering the keyboard or unplugging an external mouse or on any device, setting do not disturb or "parental controls"). Furthermore, the act of designating the use of the device before Shabbat should be done in an explicit way. A formula could be created or recited that would remind the user and other members of the household of the limitations.

With these concerns taken into account, it would be permissible to hold a Friday evening or Erev Yom Tov service, where the stream might be turned on before the start of the Shabbat or festival and remain active through the service. In addition, with some streaming solutions, one can leave the connection open from Friday night through to Shabbat morning.

Late afternoon services on Shabbat, Yom Kippur Neilah, and second day Yom Tov could create an additional level of difficulty. Fortunately, current technology makes it possible to arrange beforehand to set up a video link that will activate automatically at a particular time on Shabbat or Yom Tov. Computers have scripting languages that can be used to program a task, including activating a particular streaming site, for a time in the future, and then turn it off. There are several ways to set a computer to log into a Zoom conference at a specific time. One of them is found in the appendix. Some TVs can be programmed to turn on and turn to a certain source at a certain time, either on their own<sup>58</sup> or with a personal assistant or home automation.<sup>59</sup> Unfortunately, as of April 2020, while it is possible to "schedule" a Facebook live in advance, in order start broadcasting live, someone must still interface with a device directly in order activate the stream. StreamSpot will activate automatically at the host/transmission site, but in Spring 2020 changed its default interface so that the viewer must click on the screen in order to start the stream, whereas it used to start automatically upon opening the page. As of this writing, several workarounds are under

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<sup>57</sup> For an unlikely counterexample, see <https://www.youtube.com/watch?v=PC70fTalZ9c>.

<sup>58</sup> <https://ccm.net/faq/40736-program-the-on-off-timer-on-your-lg-smart-tv>, accessed 11/6/2019

<sup>59</sup> As of November 2019, Google home could be set with a timer to turn on a Chromecast. The Amazon Fire Cube does not have behavior to turn on a TV automatically, but other echo devices can be set to play any kind of media as an alarm.

exploration, but if a congregation is not using one of these, it is strongly suggested that congregations leave the stream active overnight from before Shabbat or Yom Tov.

Of course, there could also be scenarios where a non-Jew could be tasked before Shabbat or Yom Tov with turning on a participant's stream at a specific time (this might be particularly relevant in a synagogue setting, or in the case of someone who is living in an assistive care facility, or suffering from an illness that requires home care, and has a non-Jewish caregiver present).

### **C. Deactivating the Stream**

The solutions we have proposed involve having the stream activate automatically or leaving it on. What if leaving the stream on will cause disruptions of Shabbat in the home or risk violations of privacy if the stream is two way? While some might argue that doing so constitutes the forbidden labor of *soter*, "dismantling," I would argue that stopping the stream is less of a violation than starting one. In either case, there are practical solutions that allow us to avoid this *halakhic* challenge.

One excellent solution is to put the device in a room whose door can be closed when it is not being used for the service. Another is to cover the camera and use a headphones/microphone combination that can be placed in a place that will muffle the sound. A third, which requires a bit of technical prowess, is that a computer can also be programmed to sleep/wake at specific times automatically (see the Appendix for some technical solutions).

### **V Tempting Another to Violate Shabbat or Yom Tov<sup>60</sup>**

While undoubtedly there will be some who will follow the steps and precautions outlined above so that they can watch the streaming service without using an electronic device in a way that violates Shabbat, we must assume that many more will interact with their devices, in ways that are violations of the letter and/or the spirit of *hilkhot Shabbat*. Can a synagogue, in good conscience, provide this service knowing that it will tempt others to violate Shabbat?

There is a halakhic category of "*Lifnei iver lo titein mikshol*." Taken literally, this phrase from Leviticus 19:14 prohibits putting something before a blind person that might cause them to stumble. In rabbinic literature, however, the verse is adapted figuratively to refer to many types of behavior that might encourage another to violate a prohibition. So, for example, in Mishnah Avodah Zarah 1:1<sup>61</sup>

On the three days preceding the festivals of idolaters, it is forbidden to conduct business with them, to lend articles to them or borrow from them, to lend or borrow any money from them, to repay a debt, or receive repayment from them. Rabbi Judah says: we should receive repayment from them, as this can only depress them; But they [the Rabbis] said to him: even though it is depressing at the time, they are glad of it subsequently.

The implication of this text is that by trading with an idol-worshipper, we are either encouraging them to worship their idol, or actively enabling them to do so by providing them with the animal for their sacrifice (thus violating *lifnei iver*).

The gemara there<sup>62</sup> determines that if the idolater has another animal, then the prohibition of *lifnei iver* does not apply because the idolater could proceed even without our help. The parallel case would be a nazirite, who is not allowed to drink wine. If one offers them wine, is one violating *lifnei*

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<sup>60</sup> I am grateful to Rabbi Aaron Alexander for offering valuable insights that influenced this section.

<sup>61</sup> Translation by Dr. Joshua Kulp.

<sup>62</sup> BT Avodah Zarah 6a-b.

*iver*? The gemara concludes that this is the case only if the nazarite could not otherwise obtain wine, so we are enabling the offense. Based on this approach, one would not be violating *lifnei iver* by making a stream available, since we can assume that if someone was going to violate Shabbat to watch a streamed service, then it is fair to assume that if we did not make a livestream available, they would watch a different streamed service, or use the same technology for other purposes.

Even if offering something that encourages Jews to use electronic devices on Shabbat is not technically a violation of *lifnei iver*, it might still seem to be a violation of the spirit of that concept even if we are merely encouraging the violation, not actively facilitating it.

The most useful parallel cases revolve around views of driving to synagogue in the mid-twentieth century. Some<sup>63</sup> have suggested that operating a motor vehicle with an internal combustion engine is only a rabbinic violation because the purpose of the fire is not one of the classic uses for fire, and is therefore considered a labor that is not for its original purpose. It seems more likely to me that operating a vehicle that operates by burning fuel is a violation on the Biblical level. Nevertheless, the approach of most Conservative synagogues (and some Orthodox as well) is to provide parking facilities for those who choose to use them<sup>64</sup>.

A parallel case is inviting a person to a Shabbat meal when we know that they will drive to and from our home. Is one not violating *lifnei iver* by encouraging them to drive? However, it is common practice, even among many who are normally quite *mahmir*, to invite Shabbat guests, knowing that they will drive. These hosts may offer some half-hearted protest of offering a place to sleep over, but do not refrain from the invitation, on the theory that doing so will encourage a greater love of Judaism and observance in the long run. One of the classic sources cited by those who do is Rabbi Moshe Sternbuch:<sup>65</sup>

"It seems that the basis of the prohibition of "an obstacle before the blind" is its similarity to the case of a blind person who is caused to stumble. However, if the host's intention is only for his guest's benefit, he cannot be considered as placing an obstacle. Just as a surgeon is not guilty of stabbing his patient, here too there is no malevolent intention or any desire to provide harmful advice. The host's sole intention is to educate his guests and to bring them closer to the truth. When another Jew violates the Sabbath as a result of this, it is not the host but the guest who causes harm to himself, and therefore the prohibition of "an obstacle before the blind" does not apply. Because he did not order them to drive, but rather informed them that their driving on the Sabbath pained him, the host is absolved of any further liability to prevent his guest from public Sabbath violation...."

Some *poskim* address the question of providing a person with the opportunity to violate a more

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<sup>63</sup> Adler, Agus Friedman, [Responsum on the Sabbath](#).

<sup>64</sup> It is beyond the scope of this paper to revisit 20<sup>th</sup> century recommendations, or to explore the halakhic implications of autonomous or electric-only vehicles, but it is certainly conceivable that viewing a stream online, even by direct interaction with a device, might entail lesser violations of Shabbat than manual operation of a motor vehicle powered by internal combustion. Some congregations are considering "drive in" services, where congregants drive to the synagogue and turn on their radios. Those exploring this option on Shabbat or Yom Tov should consider two potential downsides:

1. In addition driving to a central location, participants might still have to access an electronic device in their car in order to hear the service.
2. Drive in services may present unexpected social distancing challenges as people leave their cars to line up for a limited number of restrooms or to socialize.

<sup>65</sup> Teshuvot veHanhagot (1:358), translation by Rabbi Aaron Alexander.

minor offense in order to discourage them for committing a more serious one. For example, Rabbi Sholomo Zalman Auerbach<sup>66</sup> discusses the case where someone is drinking wine from the first three years of a vineyard's growth, which is prohibited on a Biblical level. In order to convince him to stop, one may offer to substitute wine of untithed produce, which is prohibited on a lesser Biblical level, or wine not made under Jewish supervision, which is only prohibited by rabbinic decree. As such, one is providing the drinker with forbidden wine, but one is not guilty of *lifnei iver* because one's intent is to reduce the level of offense.

I would argue that there is also precedent to assist someone in a rabbinical prohibited behavior if the alternative would be a risk to life. The practice of distributing condoms, which began when AIDS became widespread, was approved by many even in the Jewish community, despite the fact that abstinence outside of married, monogamous relationships would have been the preferred choice, and use of a condom is *halakhically* problematic in any case. Rabbis Miriam Berkovitz and Mark Popovsky, in a paper unanimously approved by the CJLS, address the question of condom use when there is the risk of transmission of disease.

When a condom represents the best way to meet this obligation, there is no doubt that the possible violation of a rabbinic prohibition, *hashḥatat zarah*, is far outweighed by the much more serious consequences of contracting or transmitting a life-altering disease.<sup>67</sup>

Rabbi Danny Nevins pointed out that with a synagogue parking lot, or a Shabbat meal invitation, there are permitted ways to participate (by walking or staying over), whereas with a stream, the practice of accessing the stream is in itself a violation of Shabbat. I would respond that with most, though not all, streaming systems, there are indeed ways to set up the connection before Shabbat, so in this case as well, we rely on the fact that that possibility exists. This view is further explored in Mishnah Shevi'it 5:6. The text begins by forbidding selling an agricultural implement during the sabbatical year, because it will almost certainly be used for a forbidden purpose. However, it continues:

This is the general principle: any tools designed for work involving a transgression [in the seventh year] is prohibited; but if for a forbidden and a permissible purpose, it may be [sold].

We make an option available because we can rely on the fact that there is a permitted way to participate, even though we know that some (or even many) may choose to participate in a way that is not permitted.

Based on this reasoning, it is important that any video option is offered in a way that minimizes, rather than increases, violations of *hilkhot Shabbat*, and that there be at least some way, even if it is less convenient, to participate without such a violation. The stream should be made available with the fewest number of actions (opening an app, or clicking an easy bookmark), and no typing. If the service is protected by a password, the link should be in a password protected part of a website that could be logged into before Shabbat, or accessed with a unique personal link that incorporates the password.<sup>68</sup> In contrast, requiring a user to type a password on Shabbat immediately before accessing a stream might fall into the category of "*lifnei iver*" because we are actually encouraging

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<sup>66</sup> Minhat Shlomo I 35:1.

<sup>67</sup> Rabbis Miriam Berkovitz and Mark Popovsky, [Contraception](#), EH 5:12.2010.

<sup>68</sup> If one is offering a service via Zoom with a password, it is important follow this approach and offer a link that incorporates the link, so that the user may click the link directly without having to type the password.

typing that the user would not otherwise have done.<sup>69</sup>

To summarize this portion of the analysis, we must acknowledge that if streaming services are made available, people will access them in ways that are not in the spirit or the letter of the *hilkhot shabbat*. However, we can understand that if one makes it possible for the stream to be accessed in ways which are not a violation of Shabbat, one is not responsible for the actions of those who choose to access it in other ways. Nevertheless, we must take every opportunity to minimize these violations.

## VI Recording

Many streaming services record the transmission by default, or with an additional pre-set option. The CJLS has endorsed opinions both permitting and prohibiting the recording of services on Shabbat and Yom Tov, based primarily on videotaping technology. In 1982, Rabbi David Lincoln's<sup>70</sup> opinion opposing recording services was unanimously adopted by the CJLS, and that view was reinforced by Rabbi Tucker's responsum on closed circuit video in the synagogue. In 1989, Rabbi Arnold Goodman offered an opinion permitting recording,<sup>71</sup> to which Rabbis Dorff and Tucker offered a concurrence if the recording instrument was set up before Shabbat to work automatically or was to be operated by a non-Jew. They offered these limitations because they saw a permanent recording to be a violation of *koteiv*.<sup>72</sup>

The concerns about recording can be segmented into three categories, each of which has already been addressed in principle above, but the last of which requires further analysis.

### A. Is Recording *Ketivah*

The 20<sup>th</sup> century CJLS papers address the question of whether recording onto videotape is *ketivah*. Rabbi Goodman, argues that it is not, Rabbis Dorff and Tucker argue that it is. Rabbi Nevins, while not addressing the question of streaming, concludes that all-digital recording of the type associated with streaming, is considered full *ketivah* because it creates a permanent record, despite the fact that the recording is not physically visible. These concerns about whether turning on a recording is *ketivah* can be avoided by using a system that records automatically.

However, there is a secondary concern: is it prohibited to be recorded on Shabbat? In some sense, this a moot question. In many urban settings, is essentially impossible to walk the streets or other public places without one's image being preserved. Even in Jerusalem, the "Kotel Cam" continues to transmit on Shabbat. Even at home, one cannot avoid being recorded. Smart doorbells and home security cameras retain video. Though there has been a backlash against the practice, some "smart home" assistants transmit audio even when they are not addressed directly.<sup>73</sup> On the other hand, these uses could be considered *p'sik reisha d'lo niche lei* the practice is unavoidable. We do not intend for security cameras to track our movements, or for Google, Apple or Amazon to preserve our conversations at home.

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<sup>69</sup> With password managers, it is possible to have a password auto-filled by the computer, but many of these managers themselves require a password. Further analysis is required as to the Shabbat implications of unlocking a device with one's face or fingerprint.

<sup>70</sup> Rabbi David H. Lincoln, "[Videotaping on Shabbat](#)" OH 340:3.1982a.

<sup>71</sup> Rabbi Arnold Goodman "[May a Shabbat Service Be Taped?](#)" OH 340:3.1989b.

<sup>72</sup> In his concurrence, Tucker permits videotaping even though he prohibited it in his *teshvua* on closed circuit published earlier that year.

<sup>73</sup> <https://www.forbes.com/sites/tjmccue/2019/04/19/alexa-is-listening-all-the-time-heres-how-to-stop-it/#5d7f6fab5e2d>, <https://www.computerworld.com/article/3429601/apple-suspends-siri-snooping-and-promises-more-control-for-the-rest-of-us.html> retrieved 2/16/2020,

When a service is intentionally recorded, those participating are behaving with the intent and desire that their words and actions be preserved. Some may view this as sufficient ground to prohibit recording. The more permissive view would be that once the system is activated, it is encoding whatever it sees- transmitting and recording a constant string of ones and zeroes, whether we are active or not. The “*ketivah*” is happening with or without human participation.

Even if we assume that recording is *ketivah*, it is permissible to benefit after Shabbat from labor done on Shabbat as long as it was not done by a Jewish person, and as long as one waits until long enough after Shabbat for the work to be done.<sup>74</sup>

### **B. The temptation to repair or adjust the equipment: *Shema Yitaken*.**

In general, the process of recording is indistinguishable from the process of streaming, using the same equipment, so once we are streaming, there is no greater reason to assume this concern for recorded streaming than for video recording. Anecdotally, streaming equipment is more likely to be reliable than a videotaping system on a timer. Recording is not a separate process, and work if and only if the stream itself does.

### **C. The impact of recording (and transmission) on the feel of the service.**

This concern is the most divorced from *halakah*, but the one with the broadest implications. The 20<sup>th</sup> century *teshuvot* expressed concern that recording the service would encourage people to “play to the camera” or otherwise change the feel of the service. Indeed, these are real concerns. Will services be warped by the desire to meet certain “production values?” Will the recording lead to violations of privacy for those attending services? When the 20<sup>th</sup> century *teshuvot* were written, the assumption was that a video camera would be a large piece of equipment operated by an expert, and that people would be self-conscious while being filmed. Updated technology and cameras on cellphones have changed that. In the 21<sup>st</sup> century, there is an assumption that many public events will be streamed and/or recorded. At children’s school events, not only is there a live feed for grandparents in other cities, but, despite the assurances that a recording is being made for all, there are always parents blocking the view of those behind them, by holding cameras up overhead to record video. While it would be wonderful for synagogue to be a refuge from this trend, most of us have grown jaded to the idea that any public event we attend may be streamed or recorded.

Some of those attending services may object to their likeness being made visible to anyone in the world who wishes to view. In general, we assume that the synagogue is a public space. It is impractical to ask all attending to sign a release. Nevertheless, synagogues that stream and/or record services should post a sign and make an announcement to the effect that they are doing so, and encourage those who do not wish to appear to sit in an area that will not appear on camera. Congregations will have to determine what circumstances would be sufficient to lead them to restrict availability of recordings, or black out particular services altogether.

It is also important to note that many public places, including synagogues, have security cameras which may be viewed live by security personnel and/or recorded to be reviewed. Of course, the purpose of this transmission and recording is *Pikuah nefesh*, the protection of human life, so it is not governed by the same concerns that we have regarding streaming or recording for the purpose of participation. The recording is typically only reviewed in the event of a security incident. Furthermore, the quality of this recording may be less than we are used to, and it is not made available to the general public. Nevertheless, anyone entering a synagogue building must assume that there is some possibility that one is being recorded.

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<sup>74</sup> Shulhan Arukh OH 307:20.

There are also questions of copyright law. For congregations located in the United States, it is worth noting that US copyright law allows use of copyrighted material during worship without permission: “the performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or the display of work, in the course of services at a place of worship or other religious assembly.”<sup>75</sup> However, this permission does not necessarily apply to transmission of a live or recorded service. Congregations streaming a service which includes melodies which are still covered by copyright, even if the original composers are deceased (for example, tunes by Debbie Friedman, Shlomo Carlebach), could be legally obligated to pay royalties. Some platforms, like YouTube, have automated algorithms that will automatically block or mute audio which they determine to be protected by copyright.

There is one way in which recordings available might improve decorum. My congregation has prohibited the use of personal electronic devices in our sanctuary on Shabbat. Nevertheless, I would sometimes look out over the Shabbat crowd and see an attendee trying to look nonchalant while propping a cellphone in their siddur so that the camera extends just over the top of the page, in order to record the service. Having an official stream, and recording set up in a way that is respectful of Shabbat, might reduce the temptation of individuals to attempt to record or transmit the service in ways that would be more disruptive. Even as we permit the use of screens for some Shabbat settings, we should work even harder to make the prayer space a haven where personal technology is set aside.

## VII. Impact on Community

### A. *She’at Hadeh̄ak*

The principle of *she’at hadeh̄ak* exists because we recognize that unusual situations arise, and we are in the midst of such a situation. Jewish communities frequently experience brief localized disruptions (for example inclement weather). Jewish communities have often found ways to maintain regular worship even during longer-term periods of war or unrest. There are many stories of Jews risking great peril to gather for prayer during the Shoah. However, the current crisis is the first in generations that is so widespread across so many Jewish communities simultaneously, and is a result of natural forces rather than oppression. Does *she’at hadeh̄ak* apply only to total lockdowns, or to time when society is partially re-opened? There is no doubt that during the current crisis, for many Jews in the US and in many places beyond, there will be continued significant periods of time where electronically transmitted services are the only safe or legal way to access communal prayer, and indeed, connect to community in general. It seems increasingly likely that even when communities are able to gather in person, there will be a period of time when only a fraction of those who wish to attend will be able to do so in person. Many regular synagogue attendees fall into high risk groups. Furthermore, both research<sup>76</sup> and anecdotal evidence<sup>77</sup> suggest that communal singing (even by a single asymptomatic carrier) may be many times more effective than breathing, talking, or even coughing, at spreading the disease, which would make congregational singing during communal worship a particularly high risk activity.<sup>78</sup>

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<sup>75</sup> US Code Title 17, Chapter 1 110:3.

<sup>76</sup> Robert Loudon and Marie Rena Roberts “Singing and the Dissemination of Tuberculosis” in *American Review of Respiratory Disease*, 98:2, 1968

<sup>77</sup> <https://www.latimes.com/world-nation/story/2020-03-29/coronavirus-choir-outbreak>, Retrieved 4/22/2020.

<sup>78</sup> Some have suggested that a return to communal prayer may require that prayers be spoken rather than sung, which is rare good news for communities with weak congregational singing.

In many communities around the world, High Holidays 5781 will be a time when it will be unsafe, or even illegal, to gather Jews in the numbers and proximity typically associated with the High Holidays. Offering electronic access to services could be essential to maintaining the cohesiveness of many communities until for many more months after that. The *she'at hadeḥak*, will not end all at once, but will trail off until such time that communities can gather again safely in large numbers without excluding many members due to health concerns. After that time, individuals may experience “pressured times” due to personal illness or other circumstances.

However, there is legitimate concern that arrangements which were proposed and approved only for a period of disruption will have an impact that will continue to reverberate through communities in the years that follow. COVID-19 will cause significant changes to every society and culture, in ways that we can only begin to explore. How will widespread virtual access to ritual change the nature of our own communities? Will this have an impact on Judaism as great as the destruction of the Second Temple, which provoked a fundamental change in the very focus of Judaism, and the very nature of its primary leadership, institutions, and rituals, or “merely” as big as the shift to the suburbs in the 1950’s which left the fundamental structures in place but resulted in the transformation, demise or relocation of many institutions? Both changes were traumatic but ultimately led to positive creation and growth.

## **B. Will Streaming Services Harm Attendance/Connection at Synagogues and Local Prayer Communities?**

For the time being, having fewer people in synagogue will be considered a benefit of streaming. What about when the crisis is over? Even in the absence of worldwide pandemic, there are benefits to offering Shabbat and Yom Tov services via technological means as a way of enhancing human safety and dignity. Doing so is an important accommodation for those facing serious health or mobility challenges, or who for other reasons cannot attend a service in person. At the same time, we must recognize that there are those who could attend in person, but might choose not to out of convenience, or who prefer the stream of a service from another community to in-person attendance at a congregation close to them. Some might argue that providing services via streaming would lead to breakdown in community, or encourage laziness of those who don’t wish to have to travel to synagogue. However, it is just as likely that for every person who sees streaming as an easy out and chooses not to attend a service in person, there is someone else who might otherwise skip prayer altogether, or would view an alternative service lacking the basic components of the liturgy, who is instead inspired to future participation.

Anecdotally, my own congregation previously had a daily morning and evening minyan that sometimes required making calls or appeals to ensure 10 Jews in attendance. During shelter in place, attendance skyrocketed, as we usually had over 20 individuals visible on screen. I believe that some of those will become live regulars when we return to in-person worship, but some have also asked “can’t we keep doing it this way when life gets back to normal?”

Though the analogy is imperfect, we might look to the world of contemporary music. Anecdotally, some performing artists who made live or recorded streams of their music available, free or for a charge, found that doing so drove further interest in live attendance. A recent study, which is more general but may be biased, given its source,<sup>79</sup> claimed that 67% of those who viewed a concert or event online were more likely to purchase a ticket to attend a similar event in person after doing so. Many performers whose live shows were cancelled during the crisis are offering on line performances, with exactly this in mind.

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<sup>79</sup> <https://livestream.com/blog/live-video-statistics-livestream>.

There is a legitimate concern that large congregations with excellent production values or particularly charismatic spiritual leadership will draw attendance and financial support away from local congregations. There may be congregations that seek to bring in a “remote preacher” at the expense of local clergy, or individuals who feel that an “online membership” is all they need. The music world is dominated by a handful of “celebrity” performers. However, there is still demand for local musicians who are successful performing in local venues, and at events where live musicians add a needed energy.

Peloton has created a new community of stationary bicyclists who might previously have gone to a “spin class” and now ride in their own homes. They pay monthly for the privilege of participating in live streamed or recorded rides and feel strongly bonded to instructors they have never met in person, and to each other. How many will miss the experience of going to a live cycle studio for a scheduled class?

Then again, in my congregation, the Peloton riders enjoy sitting next to each other in services or at kiddush and talking about their favorite rides and instructors. Live interactions are not going away, but the connections formed through on line experiences and connections may determine where people go to seek those live interactions. Enough streamed services are already available that someone who is looking for a stream and cannot find one from their local congregation will find one from another community, either live or recorded. “B’nai Peloton” is not far off. In contrast, we can hope that if Jews connect to a local congregation through streaming, they will at least be tempted to connect with that community, and will likely partake all the more strongly in live interactions with that congregation when the need and opportunity coincide.

### **C. Sense of Community/Aesthetics**

One concern about making services available over video link is that the patterns of interaction are different than for in-person worship, and there are often, essentially, two classes of participants. When the service is streamed one way, those who are physically present can hear each other responding and can have the types of informal interactions that strengthen community. Those who are viewing the stream remotely would be more passive viewers. It is technically possible to make a streamed experience more interactive. For example, streamed events can be accompanied by a text chat that is visible to remote and live participants. However, having Jewish people make use of these technologies on Shabbat or Yom Tov would not be appropriate due to the issues of *ketivah*. When the service is a multi-way link, like zoom, if all of the participants are in different places, it becomes challenging to have the side interactions that can be the glue that holds a service together. The question of access to siddurim, humashim and other texts can technically be solved with screen share, but this presents *halakhic* challenges. This is the time to ensure that every Jewish household has access to these most basic Jewish texts.

When the committee took up this paper, some asserted that a one-way streamed service was *halakhically* preferable to a multi-way connection like Zoom. This is not a foregone conclusion. As technology evolves, each implementation may have distinct advantages and disadvantages in terms of Shabbat observance. Reisner’s original paper suggests that even if there is a minyan all in one place, it is strongly preferable that the connection be two way so that the remote participants can feel like part of the minyan.

If there is a core in one location and other participants are virtual, this could create a “digital divide.” Some synagogues have considered moving a big screen into the sanctuary so at home participants can see and be seen by those in the sanctuary, but that clearly changes the feel of a holy space and time.

Integration of live and remote participants raises foundational questions of presence that have not

been addressed directly by this committee. I addressed the question of *dukhening* above, but others are more pressing. Any activity that does not require a minyan located in one physical place (English reading, teaching Torah, prayers like Ashrei or Adon Olam) may clearly be led from anywhere.

Some questions will create particular dilemmas for clergy or other key participants who are in high risk groups, though they may well continue to be asked after the current situation has abated:

If the rest of a minyan is constituted in one place, may one who is participating remotely serve as their *shaliah tzibbur*? Shulhan Arukh OH 55:13, the source cited by Rabbi Reisner in permitting remote participation, assumes that the prayer leader is in the same place as the minyan, so if one is following Reisner's approach that a minyan must be constituted in one place, the *shatz* must be with them<sup>80</sup>. The questions of Torah reading and aliyot performed by those who are not present with the minyan, including reading from a scroll that is visible only over a screen, also require further consideration<sup>81</sup>.

While these technological options may be a boon to some who cannot attend synagogue, they will present challenges and opportunities for those with different abilities. While in theory, those who are older and not able to travel to synagogue might benefit the most, those who are not technically savvy may end up being excluded or frustrated. Attention must also be paid to how these options are made accessible to those with visual, auditory or cognitive impairment, or without access to technology.

Furthermore, these solutions will create new challenges for clergy and prayer leaders. Some may not have the technical ability to manage these processes, though this could be the opportunity to involve other talented professionals and lay leaders. Engaging and inspiring over a screen requires additional skills and energy beyond those needed to do so in person. A good *shaliah tzibbur* draws upon and focuses energy from the members of the community. An excellent preacher and teacher interacts with and picks up signals from their learners. How easy is it to accomplish these things when the community is visible on a screen, if at all? In many communities, the responsibilities of in-person worship are divided among clergy and lay leaders. In a video environment, more of the burden may fall to a smaller number of individuals, increasing wear and tear on those leaders.

Congregations will also struggle with the financial impact of these solutions. How will they affect membership models? "High Holiday Tickets?" The need for physical facilities and real estate? There is a longstanding tradition in many communities of soliciting donations during services (even on Shabbat and Yom Tov). The Kol Nidre appeal, auctions of honors, and *misheberakhs* which mentions a donation amount are among the examples, but very clearly, the intention is that money will not actually change hands on Shabbat or a holiday.<sup>82</sup> Congregations should not be encouraging participants to engage in electronic financial transactions on the Shabbat or holiday itself, neither for "Pay Per View" nor as donations.

These cultural and aesthetic issues will require significant attention.

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<sup>80</sup> This topic requires further study. Best practices as to how a *shaliah tzibbur* can lead a community safely in person during the current time will have to take into account further research on the role of singing in spreading the virus.

<sup>81</sup> Some enterprising soul will undoubtedly come up with a way for a remote participant to open the ark with a garage door opener or home automation system. I do not recommend this.

<sup>82</sup> Though note the practice among Ethiopian Jews, described in Rabbi Sharon Shalom, [From Sinai to Ethiopia](#) p. 141-2!

## D. Impact on Shabbat

Even if every effort is made to remain within the letter of the law, it is clear that encouraging large numbers of Jews to spend more time in front of a screen on Shabbat can have a deleterious effect on the atmosphere of Shabbat. In the mid-20<sup>th</sup> century, the Conservative movement encouraged driving “to synagogue only” on Shabbat. One could debate whether this had the intended effect. While encouraging Jews to drive to synagogue on Shabbat may have helped create major congregations in the suburbs, but it also led to Jews taking their wallets with them and travelling to many other places as well.

Technology encourages multi-tasking and distraction<sup>83</sup>. Those who would head out to the lobby (or turn to their neighbor) to schmooze during the service will now be the more tempted to text, email or scroll through social media, keep up with online games, watch other media, or shop online. These activities are all contrary to the spirit and letter of Shabbat.

I mentioned above that there are practical solutions (enabling parental controls and do not disturb, covering or disabling keyboard and mouse) that mitigate the *halakhic* concerns. If there is only one person in the household participating, participating through headphones which are left plugged in reduces the chances that other sounds from the device will disrupt Shabbat. It would not be hard to pre-configure a computer or tablet with an app or a special user account that prevents it from shutting down on Shabbat or Yom Tov and allows it to only run one particular streaming application during that time. It may be further worthwhile to consider ritual solutions that serve as a reminder that this technology is permitted for one purpose, not others. Our sages created three kinds of Eruv rituals that both enabled and limited the blurring of lines and categories, for carrying (*eruv hatzerot*) and travelling (*eruv tehumin*) on Shabbat, and for cooking for Shabbat on Yom Tov (*eruv tavshilin*). Perhaps we need a fourth eruv, for communication (an “*eruv tikshoret*”?) that would do the same for electronics.

## VIII Conclusions

COVID-19 has accelerated a trend that was already well underway, of communities and individuals offering ways to join virtually in Shabbat and Yom Tov rituals. While most believe that the current situation will generate a hunger for face-to-face interaction, it may be months or years before communities are able to gather in person as they did before. Unlike a typical *she’at hadehak*, the current situation will likely ease slowly over time, rather than being resolved all at once. In the meanwhile, these practices will become well-established and develop their own momentum and norms. Even when the current crisis is over, and we must no longer claim *she’at hadehak*, the nature of many aspects of society will have changed in ways that we cannot begin to predict.

Meanwhile, technology will evolve even more rapidly, with new platforms and new features in the existing ones. Small technical changes may have significant *halakhic* implications. We have already begun working at a movement level to develop partnerships with technology providers to create more Shabbat-friendly options and identify “best practices.” This work must accelerate.

Meanwhile, increased sophistication of smart assistants moving towards artificial intelligence may change how we see the use of technology on Shabbat in general. This paper speaks to a particular point in time, and its conclusions will need to be reassessed as we transition to a “new normal.”

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<sup>83</sup> I find it personally challenging to be sitting at my computer during davening even during the week and not be pulled away by a notification or alert.

## P'sak

- A. This is an unprecedented time in our Jewish tradition. Gathering together in person for prayer is one of our critical practices. This paper reflects a particular transitional moment, as we look ahead from a present when in person communal prayer is impossible, to a near future when it will be possible for small groups only, with many still being excluded. Some congregations will find creative ways to serve the needs of their communities during this time while keeping Shabbat and Yom Tov screen free, and this is to be commended. Other communities will conclude that the wellbeing of their communities and their members depends on offering communal worship during holy times, with electronic transmission being the only means to do so safely, particularly on the High Holidays. After the current crisis is over, some of the leniencies discussed here may no longer apply, but there will still be real human needs and demands to be met through electronic access to ritual.
- B. Within the following parameters, it is permissible for a community to offer a stream or interactive videoconference of its services on Shabbat and/or Yom Tov:
  1. The equipment must be set up to be running before the holy day, or operate on a timer.
  2. While a non-Jewish employee may (and probably should) be assigned to handle potential technical glitches, it is strongly preferable to choose a streaming solution which is always on, or which activates automatically at a set time, over one which must be activated manually, even if a non-Jew is designated in advance to do so.
  3. If a minyan is present in one place, one who is located elsewhere who accesses that minyan through video link and prays along may fulfill their obligations to pray as well as any other ritual mitzvot that are part of synagogue ritual, including hearing Torah reading, and *dukhening*.
  4. If, due to the pandemic, 10 Jews cannot gather in a single physical location, then the options for participation would be the same as those permitted to such a group during the week by CJLS rulings. For some congregations, this would mean that no items requiring a minyan would be included. Congregations that rely on the temporary "Zoom ruling" to include items requiring a minyan would have to use a multi-way link that allowed participants to see and hear each other.
  5. While under normal circumstances, it is preferred to provide an opportunity for each person to hear the shofar directly, if it is not possible (or safe) to do so, then those listening remotely should hear the shofar through remote means.
  6. If the stream is not live, viewers may still use it to guide their own prayer and study, but may not fulfill obligations by responding amen, or rely on the 10 Jews pictured in the video to constitute a minyan.
- C. The video feed should be accessed by viewers/participants in a way that does not involve their direct interaction with an electronic device. This may be accomplished by leaving the stream on from before the holy day, by using the equivalent of a timer, or by arranging in advance for a non-Jewish person to activate the stream.
  1. Some have suggested using a technical solution which requires people to access the feed before Shabbat, and locks further access on Shabbat itself, but this may have the side effect of excluding those who are accessing the feed through a timer. In any case, there is more leniency to activate the stream in a more direct way for a person who has an illness or disability.
  2. If the stream turns on automatically on Shabbat, or can be accessed by logging in on Shabbat, it must be configured so that it is at least possible for users who are accessing via a timer to do so without further interaction with the device.

- D. We must educate our communities as to the meaning of Shabbat observance, and offer guidance how to participate in ways that do not violate Shabbat. Still, we must be realistic that these video links will also be accessed by those who choose to do so in a way that is not be respectful of the letter or spirit of *hilkhot shabbat*. This fact does not prohibit offering the stream, but does mandate that synagogues that offer a stream to do so in a way that minimizes the types of violations that might be committed by users accessing it, in particular by eliminating the need for any typing. This could be done by allowing access through a simple link, or allowing a password to be typed before Shabbat.
- E. Every effort must be made to provide those participating via video with a copy of the siddur/humash in a physical format, or to encourage them to download and print out before Shabbat so that they do not have to make further use of a device on Shabbat or Yom Tov. While it is technically possible to share the words of the siddur or other texts on the screen, it is difficult to do this in a way which is easy to read and also fully compliant with the letter and spirit of Shabbat.
- F. Initiating a recording on Shabbat is a violation of Shabbat. Individual rabbis must use discretion in determining whether it would be appropriate to configure a device before shabbat to record on shabbat for download after shabbat. Communities should be guided by their previous policy on recording the service. Some might choose to follow the reasoning of Rabbi Lincoln and others in forbidding a recording at all. However, since technology makes it easy for recording to be set on a timer or “always on,” (or, indeed, with some systems is impossible to disable the recording feature, only to discard the recording after the fact) a *mara d’atra* might choose to enable recording if it is set up in advance and the recording process does not require intervention on Shabbat.
- G. These same principles would apply to other ritual activities taking place outside the prayer context (individuals joining for *seder*, *tikkun layl Shavuot* or other study). Communities should consider carefully which streamed activities must take place on Shabbat or Yom Tov, and which might just as appropriately be pushed off to another day.
- H. Offering many types of activities that were previously only face-to-face, via one-way or two-way video, is a trend that is unlikely to be reversed. It is the nature of these offerings that even if they are not available in one local community, Jews will take advantage of them from elsewhere. There is reason to believe that making services available via these means can actually increase engagement and accessibility with local communities, but care must be taken that doing so does not disrupt the decorum of the service itself.
- I. The wider intrusion of technology into Shabbat and Yom Tov worship will require greater fences to preserve the sanctity of the day. It is a short step from watching services to emailing, online shopping, and other activities which violate the letter and spirit of the law. Simple solutions, like covering one’s keyboard or setting “do not disturb,” will be valuable, but will not suffice. Serious communal efforts, perhaps including newly created rituals carried out on the eve of Shabbat that demarcate tolerated from unwelcome technology, will be required to maintain the sanctity of holy time in the face of unprecedented pressures

## **Appendix I: Sample Language:**

Congregation is \_\_\_ pleased to offer video access to our services through \_\_\_\_\_

We don't want to encourage people to use electronic devices on Shabbat and want to minimize any potential violations of Shabbat for those who seek to participate. With this in mind, please download the Zoom app (for laptop, phones or tablets) and the siddur (and print out) before Shabbat.

Logging in for Friday night services before Shabbat and leaving the Zoom on is not a problem regarding observance of Shabbat. We have set up streaming so the same room will remain active through the morning service. This means your household can join services Friday night and remain on through the morning service. It is possible to set a computer, phone or tablet to "stay awake" over Shabbat (see below). However, if you are doing this, it is key that you log in from a room in your house where activities and noise will not be a disruption to others.

When you are logged in, please be mindful that any noise you make or side conversations you have may be transmitted to all those assembled, so consider being quiet or using the "mute" feature.

When we rise as a congregation, please keep in mind that when you stand up, your camera may be pointing at a different part of your body than it was when you were sitting down.

For more tips on making davening through video more meaningful, this article by Rabbi Alexander Davis may be helpful:

<https://forward.com/life/441980/virtual-davening-livestream-minyan-jewish-prayer-quarantine/>

## Appendix II: Specifics for Current Technology

1. For the long term, most congregations will have a minyan in one place, and will seek a one-way turnkey system like StreamSpot that activates automatically and broadcasts a constant view of the bimah. One potential disadvantage is that the viewers cannot be active participants. The stream may be set to go on automatically, and users can leave a computer on, set with a timer (see Appendix 3) to enable the stream at a set time. As this paper was being completed, StreamSpot changed their app interface to require a click in order to view the stream. We are actively working with StreamSpot to resolve this, but in the meanwhile, leaving the stream active from before Yom Tov, or having StreamSpot stream through a “YouTube Live” channel, rather than its embedded app, are possible workarounds.
2. The most popular interactive option (especially important during quarantine) is Zoom. There are a number of factors to keep in mind:
  - a. The paid Zoom app can keep a conference open for 24 hours, as long as at least two users are logged in. For a typical Shabbat, this eliminates many issues. For a two-day Yom tov or other situations, it is possible to set a zoom to turn on at a specific time. Zoom also offers a feature called “Zoom Rooms” that enables one specific screen to turn on and off at a set time, but it is designed for conference rooms and hard to implement across a community.
  - b. In order to fulfill the requirements of the minority “*hora’at shaah*” position, 10 adult Jewish participants must be able to see and hear each other (further clarification is required whether all must see each other, or whether the shatz being able to do so is sufficient). Typically, this is only possible in “grid view” rather than “speaker view.” Ideally, users would log in before Shabbat and set themselves to grid view, but this feature may not always remain set.
  - c. In practice, a large zoom service offers the best experience with use of the mute/unmute, spotlight and “grid view” features. Some might consider activating these features with a mouse click to be permissible under unusual circumstances. Others might choose to interact with these features “*k’lachar yad*” (for example, unmuting by hitting the space bar with their elbow).
  - d. The current state of zoom security means that for any “public” service, it is best practice to someone monitoring the waiting room to admit people and dealing with any disruptions. This person should not be Jewish.
  - e. A congregation which wished to absolutely prevent people from logging into the zoom in a forbidden way on Shabbat could “lock” the meeting before Shabbat, but this would also have the side effect of preventing people from logging in a permitted way via timer, so I do not recommend this.
  - f. Unfortunately, due to the nature of electronic communications, there is no way to avoid audio lag, so one must be cautious about interference created by multiple voices trying to sing together which will end up being out of synch. Several techniques have proved to be helpful in combination.
    - i. Focusing on melodies or prayers that are call and response (useful for Hallel, and melodies for Kedushah and Adon olam that lend themselves to this)- visual cues from the leader can be helpful. Kaddishes similarly work well.
    - ii. For a few songs each service (like aleinu, where people are already unmuted for the kaddishes before and after) allow all to sing and acknowledge that it is going to be a cacaphony.
    - iii. The “singing with the car radio” approach: have participants muted in a halachically appropriate way, but sing along loudly in their own space.
    - iv. Sing **very** slow (useful for short passages, like the first sentence of the shema, or some niggunim.)

- g. For services with large attendance, the “webinar” feature of zoom is an important solution. A relatively small number of people at specific locations are “presenters” and can all be visible to all participants the same time. They can lead parts of the service and interact with each other and are heard and seen by all. Hundreds of others can see and hear, but not interact or disrupt. Individual participants can be invited to be a “presenter” in order to play an active role in the service, and then demoted to view only. Zoom can also be set to broadcast through a streaming solution, though there are some limitations to this practice, including lag.
  - h. Zoom can be set to have a default behavior of recording every meeting. This feature should be used with caution if there is a chance that someone Jewish will be actively starting the meeting on Shabbat or Yom Tov, but on the other hand, knowing that this is set will remove anyone’s temptation to do so “on the fly.”
  - i. Congregations should consider disabling the chat.
3. There are many competitors to Zoom including WebX, GotoMeeting, Microsoft Teams, multi-way Facetime or Skype, and new offerings from Facebook and Google, that I have not investigated. The final version of this teshuvah is be frozen at a particular point in time, but we will try to create resources which will be updated on an ongoing basis evaluating other solutions which gain significant market share.
  4. Facebook Live has many strengths, but there are three *halakhic* limitations that those seeking to use it on Shabbat must consider and seek to mitigate.
    - a. It is very difficult to activate automatically, and it records automatically. This could mean that a Jewish person who activates a FB live transmission is engaging in *ketivah*. One potential workaround is that FB live offers the opportunity to not keep the recording. This could make the recording considered “temporary” or a *melakha she-ena tzarikh l’gufa*.
    - b. The interface strongly encourages typing and responses.
    - c. The received video can lag significantly behind the live action. This is true when done from a phone or laptop, but even more so if streaming through Zoom (the lag can be minutes!) As such, there is a question in my mind as to whether it can be considered truly “live” for the purposes of fulfilling those obligations that require hearing something live (shofar, megillah).

## Appendix III

Making technology more Shabbat friendly

A. Turn off automatic sleep mode, so that you don't have to wake it up or re-enter password.

1. Make sure it is plugged into power.
2. For iPhone/iPad, in settings, under display and brightness, set auto-lock to never.
3. For PC see <https://www.help.k12.com/s/article/How-to-Disable-a-Screensaver>
4. For Mac, in Control Panel, under "Desktop and Screen Saver," change "Start After" to "Never."

B. It is possible to set a Windows or MacOS computer to automatically log on to a website or a zoom call at a specific time. One solution is as follows:

1. Make sure you are using the Chrome browser.
2. Download a Chrome Extension called "Tab Schedule" (you will be warned as to whether you trust this extension).

<https://chrome.google.com/webstore/detail/tab-schedule/kegpdidbhjdbmmbonhembeginjeg?hl=en>

3. In Chrome, open the extensions tab (by selecting from "Window" menu or going to `chrome://extensions/`)
4. In the Tab Schedule sections, click on "Details"
5. On the next screen, click on "Extension options". You will now be able to enter the Web address of the site you want the computer to turn on at a specific time, and the date and time on which you want it to activate. This will work for many kinds of one way streams, though it is hit or miss with Facebook live.

This method will also work for Zoom, with several additional steps.

1. Enable the Zoom app, and log in on your account (free account ok for participants as long as the Zoom host has a paid account)
2. You need to allow Chrome to automatically launch zoom (This is the hacking part! If you skip this part you will have to click a checkbox each time!)
  - a. On a MacOS computer
    - i. Open the "Terminal" app (Under applications/Utilities)
    - ii. Paste the following into the terminal app  
`defaults write com.google.Chrome ExternalProtocolDialogShowAlwaysOpenCheckbox -bool true`
    - iii. Restart Chrome.
  3. On a PC
    - i. Download the file at  
<https://drive.google.com/open?id=1dbIIOTcFx0XXnI06Lly3QVn5SjdYEpWf>
    - ii. Click on it (this will provoke some scary warning messages about editing your windows registry. Live on the edge and go ahead)
    - iii. Reboot your computer
3. Open Chrome. On the next screen, click on "Extension options". You will now be able to enter the "Zoom address" from the invitation. If the room has a password, which it should, you will need the long form that encodes the password as well: for example.  
<https://zoom.us/j/5555555555?pwd=S0lnb2VqsFjdFhtWksdfxeXV5L0hTdz09>, and click "Add URL"

4. You will then have a field where you can Add a day and time. Choose the day of the week and the time (Saturday, 9:00 AM), and hit the plus sign.
5. You can repeat this process for multiple zoom rooms and multiple dates for each one.
6. The first time you do it, you will get a pop up asking if you should always open this type of link in another program. Check the box and say yes, and then you will not see this box in the future (this is what all the terminal and registry stuff was about).

### **C. Stopping the stream**

1. Ideally, the device would be in a room that could be closed off .
2. One low tech solution is simply physically blocking the device when not in use. If one is using a headset, at times when one does not wish to engage, one could put it in a drawer or cover it with something that muffles the sound, and cover the camera.
3. The computer can be programmed to “go to sleep” at a particular time.
  - a. On a MacOs machine: Under System Preferences, select “Energy Saver”. Click “Schedule” and set the computer to “sleep” at a particular date and time. The computer will go to sleep automatically 10 minutes after the time selected. (note, the same feature can also be used to wake the computer).
  - b. There are several ways to schedule sleep/wake on a Windows machine.

One is found at <https://windowsloop.com/schedule-windows-to-sleep-at-specific-time/>

Another is at <https://www.groovypost.com/howto/schedule-wake-sleep-windows-automatically/>