

**Report and Recommendation by the Bet Torah Ritual Committee
to the Bet Torah Board of Directors on the use of limited and conditional
live streaming of Shabbat, Yomim, and Hagim services**

A. Introduction and overview

The question has arisen whether, to what extent, and under what circumstances Bet Torah should permit live audio and video streaming of Shabbat and Jewish holiday services.¹ The purpose of this report and recommendation is to address that question and explain why the Bet Torah Ritual Committee recommends an eight-month² pilot protocol that would permit such streaming on a limited and conditional basis.

At first blush, one might wonder what the big deal is. Why *wouldn't* Bet Torah take advantage of technology that allows those of its members who are unable to attend Shabbat and holiday services to observe and virtually share in those services. Live video and audio streaming would benefit the ill, the homebound, and those otherwise unable (for any number of reasons) to attend services. Through a live stream, these individuals, who ordinarily could not participate in services at Bet Torah, would be able to attend services remotely and experience some measure of the joy of communal prayer, song, and study that happens at Bet Torah on Shabbat, Yomim and Hagim. And given that the theological framework of the Conservative Movement has always been animated by what Rabbi Elliot Dorf has described as the desire “to make traditional Judaism thrive in a modern context,” wouldn’t it make sense to allow the broadcasting of our services utilizing modern technology? After all, we use microphones on Shabbat to amplify the

¹ We wish to emphasize that this report and recommendation does not seek to impose restrictions on technologies used at or in the synagogue on days other than Shabbat, Hagim, and Yomim. So, for example, we do not suggest by this report and recommendation that the Purim Shpiel, if it takes place on an ordinary day of the week, cannot be recorded or that it can be live streamed only under the terms, conditions, and circumstances set forth herein. This report and recommendation only addresses live streaming on days when melakhah is prohibited.

² The Ritual Committee believes that eight months is an appropriate length of time for a trial period because it will cover many Shabbatot, Hagim, and the Yomim, and thus will allow the Board a full and fair opportunity to evaluate the program and either continue it as is, make any necessary adjustments, or cancel it.

voices of those on the Bimah, we use microphones during the Yomim to enable those far in the back of the social hall to participate in the service, and we have congregants who utilize electronic adaptive technology so they can share in prayer. So why not live streaming?

The short answer is that the Ritual Committee, with the advice and consent of Bet Torah's clergy, believes that, with appropriate limitations and conditions, live streaming of Shabbat, Yomim and Hagim services can and should be implemented on a trial basis. However, because process matters, the Ritual Committee believes that it is important for the Board of Directors and Bet Torah's members at large to understand that in reaching this conclusion, the Ritual Committee carefully considered a number of difficult issues of Jewish law and ethics.

First, on the legal front, we note that, as members of a Conservative Synagogue, we are bound by Jewish law, Halakhah, bearing in mind that Conservative Judaism recognizes that Halakhah “has never been monolithic or immovable” and has “grown and developed” over time and will continue to do so.³ We also note that the Committee on Jewish Law and Standards (“CJLS”) of the Rabbinical Assembly, which sets “halakhic policy for Rabbinical Assembly rabbis and for the Conservative movement as a whole,” has not taken a formal position on the propriety of live streaming services on Shabbat, Yomim, and Hagim. Therefore, in determining whether live streaming is halakhically permissible, we turned in the first instance to Rabbi Brusso, who serves as Bet Torah’s mara d’atra (local, legal authority). With the guidance and direction of Rabbi Brusso, with valuable input from our Director of Community Engagement and Learning, Rabbi Koffman, and Cantor Herman, and upon review of a number of relevant Talmudic and scholarly source materials, the Ritual Committee concluded that, if implemented

³ *Emet Ve’Emunah, Statement of Principles of Conservative Judaism* (the “Principles”), p. 15.

with appropriate limits and conditions, live streaming of Shabbat, Yomim, and Hagim services would be permissible as a matter of Jewish law.

Second, the Ritual Committee recognizes that Judaism places the highest value on human dignity. Thus, even if there were a concern about live streaming somehow interfering with the peacefulness of Shabbat or the holiness of the Yomim and Hagim, that concern would be overridden by the extent to which live streaming dignifies those who would not otherwise be able to share in communal prayer on religiously important days.

For these reasons, more fully discussed below, the Ritual Committee recommends that live streaming of Shabbat, Yomim, and Hagim Services at Bet Torah be permitted on a trial basis, for a period of eight months beginning on the first live streamed service, subject to certain limits and conditions.

B. Summary of Ritual Committee recommendation

This document shall serve as the formal recommendation of the Ritual Committee for the implementation of live streaming for Shabbat, Hagim and Yomim services, subject to the following limitations and conditions:

- Streaming may only take place via approved technology;
- Streaming will be one-directional; those viewing and/or listening to the service will not be able to communicate with the congregation;
- Any equipment required for live streaming will be as unobtrusive as practical;
- Streaming will be activated in advance of Shabbat and deactivated after Shabbat ends;
- Bet Torah will not record or facilitate the recording of any streamed service and will advise all users that Bet Torah prohibits the recording of any streamed service;
- Access to the streamed service will be limited to those individuals who complete a short and simple questionnaire, to be posted on the Bet Torah website, intended to ensure that all users understand and agree that their use of the live stream is subject to certain terms and conditions, most notably that the live stream not be recorded or re-transmitted in any

way. Upon completing and submitting the questionnaire, a password will automatically be sent to the email address included in the questionnaire.⁴

C. Halakhic considerations – Does Jewish law permit live streaming?

The primary concern of the Ritual Committee was that we as a congregation do what we can to enhance the spiritual depth and breadth of communal prayer at Bet Torah without crossing the line of that which is prohibited by Jewish law or that is inconsistent with the atmosphere of peace, tranquility, and spirituality we try to achieve on Shabbat, Yomim, and Hagim. Our concern is rooted most fundamentally in our belief in the primacy of Shabbat. As we say on our website, quoting Asher Zvi Hirsch Ginsberg, Ahad Ha'am, one of the early Zionists, “More than Israel has kept the Shabbat, the Shabbat has kept Israel.” And so, in the first instance, we turn to Halakhah to determine the boundaries of what is and what is not halachically permissible.

As noted above, the first step in this process was to consider what position the Rabbinical Assembly has taken on the issue. CJLS has not issued a ruling or responsum (in Hebrew, a t’shuva) precisely addressing the permissibility and, to the extent relevant, limits and conditions, of live streaming Shabbat and Hagim services within the meaning of Jewish law. There are t’shuvot that are relevant and that are helpful in resolving this halakhic question, but we cannot say there is definitive guidance from the CJLS on the specific question at hand. Accordingly, we turned to Rabbi Brusso, who serves as Bet Torah’s mara d’atra, Rabbi Koffman and Cantor Herman, and to relevant written materials, including responsa from the CJLS, for guidance. We also researched the experiences of other, similar Conservative congregations who live stream their services. Our conclusion, explained below, is that if certain conditions are met, live streaming would be permissible as a matter of Jewish law, since, assuming those conditions

⁴ Appendix I to this Report and Recommendation contains a summary of the alternative approaches to access considered by the Ritual Committee. We include this Appendix so that the Board understands the options for access that the Ritual Committee considered, and for various reasons, rejected.

are met, live streaming would not constitute melakhah, Biblically forbidden activities for Shabbat, and would not violate shvut, the affirmative commandment to rest on Shabbat.

1. Melakhah

The starting point for our analysis of the Halakhah of live streaming was the concept of melakhah, or creative, transformative, durable labor. From the perspective of the CJLS, as explained by the Electronics T'Shuvah, melakhah is work that is (a) of a creative nature (“[t]he term melakhah is employed in reference to G-d’s creation of the cosmos in Genesis (2:2-3”)), (b) transforms our material reality (“The type of creativity discussed here is one in which material reality is transformed, rather than the creativity of song, speech and other expression of emotion and ideas.”), and (c) has a durable, permanent impact (“Labors which leave no durable impact on the material environment are not considered to be forbidden as melakhah.”). If all three of those criteria are met by the subject activity, that activity is deemed to be melakhah and is biblically forbidden on Shabbat, because the nature of the activity would dishonor the rest that G-d took on the seventh day of creation. *See* Parsha Ki Tisa in the Book of Shemot, chapter 31, verses 14-15, which teaches that we are obligated are “keep the Sabbath, for it is a sacred thing for you” and that “[s]ix days work may be done, but on the seventh day is a Sabbath of complete rest, holy to the Lord” In other words, melakhah represents a negative mitzvah: the Torah forbids us to perform melakhah on Shabbat. In so doing, we follow and honor G-d’s commandment to do as he did by avoiding work on the seventh day of the week. And, as a consequence, we are treated to a day of peace and joy. As the Jewish philosopher and theologian Rabbi Abraham Joshua Heschel put it in on pages 28-29 of his book, *The Sabbath*:

To set apart one day a week for freedom, a day on which we would not use the instruments which have been so easily turned into weapons of destruction, a day for being with ourselves, a day of detachment from the vulgar, of independence of external obligations, a day on which we stop worshipping the idols of technical

civilization, a day on which we use no money, a day of armistice in the economic struggle with our fellow men and the forces of nature—is there any institution that holds out a greater hope for man's progress than the Sabbath?

In the tempestuous ocean of time and toil there are islands of stillness where man may enter a harbor and reclaim his dignity. The island is the seventh day, the Sabbath, a day of detachment from things, instruments and practical affairs as well as of the attachment to the spirit.

So what activities are considered melakhah? What exactly is prohibited? What must we refrain from doing on Shabbat so as to enter Rabbi Heschel's island of stillness? This is not such an easy question to answer. As a recent CJLS t'shuvah explained in 2012, "while the Torah "emphatically prohibits all melakhah, ... it is vague about the definition of such activity. It is that ambiguity, that lack of certainty, that has for ages generated serious debate about what activities are and are not prohibited on Shabbat. For a Conservative Jew trying to balance the traditional with the modern, the task is exquisitely complex." Indeed, while the Torah provides some guidance as to activities that are melakhah, our sages have spent millennia developing specific lists. The tractate of the Mishna dealing with the rules of Shabbat, written in the period between 70-200 CE, some 2000 years ago, identified 39 activities constituting melakhah. Since that time, there have been countless derivative activities that the Rabbis have identified as related to or associated with the original 39 primary areas of melakhah and thus deemed to be prohibited.

Critically, as the Electronics T'Shuvah points out, it does not matter whether an activity is avot, one of the 39 primary melakhot, or toledah, a derivative: "it is immaterial whether a melakhah is said to be involved in the use of electricity is considered to be a primary or derivative category; all are equally forbidden."

The key to understanding melakhah is to understand the purpose and result of the activity, rather than its physical characteristics. If the purpose and result of a toledah is the same

as an av, if the purpose and intent of a derivative subject activity is the same as that which is expressly, directly, primarily deemed to be a forbidden activity, then that derivative activity is forbidden. And, for that matter, if an activity has comparable intentions and results to one of the derivations, that too would be deemed to be melakhah.

The Mishna (Tractate Shabbat 7:2) teaches that the avot, the primary categories of melakhah, consist of 39 activities that can be divided into the following four major groups: 11 categories of activities required to bake bread, 13 categories of activities required to make a garment, 9 categories of activities required to make leather, and 6 categories of activities required to build a structure or building. Interestingly, the last two items in the leather-making area cover writing and erasing and prohibit writing or erasing at least two letters. And it is that area, writing and erasing, that is most relevant to the question at hand, since the CJLS has determined that the creation of a video, electronic or digital record is a form of writing. Indeed, in the Electronics T'Shuvah, the CJLS concluded that even “the use of contemporary digital storage media such as hard drives and flash memory … and ‘cloud computing’” are all forms of writing and thus are biblically forbidden melakhah. *See* the Electronics T'Shuvah, p. 33. “The purpose of writing is to store information for later recall. What matters is not the process but the purpose and the result. However, we would clarify that the process does matter somewhat—writing to digital memory can be considered ‘toledat koteiv,’ a derivative form of writing rather than the original form or av. As such it remains biblically prohibited on Shabbat” *Id.* And in a related point, the Electronics T'Shuvah accepted the conclusion of Rabbi Joel Roth that photography (and, we would say, videography or the use of technology to capture and record moving images) is equally forbidden: “‘If the function of writing is appropriately defined as the

production of a lasting imprint upon some substance, it seems virtually incontrovertible that the function of photography would have to be considered forbidden under the category of writing.””

The Electronics T’Shuvah summed up the issue as follows:

The intentional recording of data—whether of text, images or sound—is forbidden on Shabbat as a derivative form of writing. While this form of recording may not employ the same mechanism as the writing used in the tabernacle (whatever that was), it has the same purpose and result—to preserve information for later display. ... [T]his form of writing should be considered a derivative form of the prohibition (toledot koteiv) which is biblically prohibited on Shabbat and Yom Tov. Thus we would prohibit the Sabbath operation of a digital camera, voice record, or computer used for writing text or recording audio or video files. These activities are all derivative forms of ‘writing’ and are therefore biblically forbidden on Shabbat and Yom Tov.

Electronics T’Shuvah, p. 35.⁵

Turning to live streaming via a camera and microphone set-up, the Ritual Committee believes that live streaming would constitute a form of impermissible derivative melakhah, toledah koteiv, if the technology were such that the transmitted images would inevitably or even likely be recorded. However, if steps are taken to disable or otherwise prevent the recording of such images, then live streaming would not constitute melakhah and thus would not be forbidden on Shabbat, Yomim, and Hagim. Assuming that Bet Torah permits live streaming only on condition that there be no recording, and assuming that reasonable steps can and will be taken to prevent any recording of streamed images (to the point that we can safely say that it is not likely or inevitable that the transmitted images will be recorded), live streaming should not be deemed to violate the biblical prohibition against melakhah on Shabbat, Yomim, and Hagim. The Ritual

⁵ The Electronics T’Shuvah concludes that because a likely unintended result of a cell phone is to record data, even if the phone is not intentionally used for that purpose, the use of cell phones is also forbidden as toledat koteiv, a derivative form of melakhah. Of course, if the technology were such that any recording could be disabled and therefore not inevitable, it would appear that a cell phone, used solely to transmit, not record, information, would not be forbidden as melakhah. The use of cell phones might be prohibited on other grounds, but it would seem that it is at least theoretically possible to avoid the melakhah problem by disabling any recording feature.

Committee believes that the on-line affirmation by users that the service will not be recorded meets this standard.

2. Shvut

There is a second consideration, the mitzvah of shvut. Parsha Mishpatim, v. 23:12 teaches: “Six days you shall do your labor, and on the seventh day you shall rest” This positive mitzvah to rest is different than melakhah, in that melakhah consists of a negative mitzvah, a prohibition against the performance of certain activities. Here in Parsha Mishpatim, v. 23:12, we see G-d instructing us to not only refrain from doing work but also to actively and affirmatively and positively rest. *See also* Parsha B’Shellach, v. 16:23, Parsha Ki Tissa, v. 31:15, and Parsha Va Yakhel, v. 35:2. As to Yom Kippur, *see* Parsha Aharei Mot, v. 16:31 and Parsha Emor, v. 23:32.

We observe shvut by doing things that allow us to rest and to create an atmosphere that is conducive to rest. And so, on Shabbat, Yomim, and Hagim, we should avoid business, we should not drive (unless it is to and from synagogue, a conclusion reached in the early 1950’s by the CJLS), we should avoid heavy exertion, and we should seek out and engage in rest, companionship, conversation and discussion and study of Torah. As with melakhah, there are activities that are clearly prohibited because they interfere with the positive obligation to rest, and there are those activities that, while not directly problematic, have the potential to interfere with the state of tranquility we seek on Shabbat, Yomim, and Hagim.

Electronic communications – telephoning, texting, emailing, engaging in social media communication – all fall squarely in the category of activities that undermine Shabbat and prevent us from appreciating the peace that Shabbat offers us. As the Electronics T’Shuvah put it: “Refraining from calling, texting, video-chatting and the ever expanding menu of social

media for 25 hours preserves the simple art of face to face communication and differentiates Shabbat from other days. Shvut, the positive command to rest on Shabbat, is undermined by the use of electronic communication.” Electronics T’Shuvah, p. 46.

The Ritual Committee believes that if live streaming is handled in such a way as to be unobtrusive and in such a way as to not lead to an alteration or modification of the Holy nature of the communal prayer in which we, as a congregation, take part on Shabbat and the Hagim, live streaming is not shvut. However, if it turns out that live streaming makes congregants uncomfortable or awkward or causes prayer leaders to modify their or the congregation’s davening, or in any other way creates an atmosphere that is not conducive to the peace of Shabbat, we would conclude that live streaming would be shvut. For that reason, and because we are in uncharted waters, the Ritual Committee is suggesting a pilot period of eight months so that we can observe how live streaming functions and determine its propensity to interfere with Shabbat.

3. K’vod Habriot – human dignity

One of the most empowering and uplifting qualities of Judaism is its focus on human dignity. We are commanded to respect the dignity of human life and to prevent anything that would cause humiliation or others. As the Electronics T’Shuvah teaches, this value cannot trump a biblical prohibition, but it can supersede a shvut-based restriction. For that reason, electronic hearing aids and other adaptive technologies, as well as microphones and other voice-amplifying technologies, are permitted.

4. The role of the remote participant

There is one remaining religious question: what is the role of the remote participant? Is one who is receiving a live stream able to count towards a minyan? May that person meet his or

her obligation to say Kaddish? These questions were answered directly in a 2001 T'Shuva authored by Rabbi Avram Israel Reisner and overwhelmingly approved by a vote of 18-2-1. The short answers are that (a) the remote participant may not count towards the minyan but may participate and be deemed to be part of the congregation once a minyan has been established at Bet Torah, (b) once we have a minyan, the remote participant may respond and fulfill his or her davening obligations, (c) a remote participant who hears the Shofar blasts on the Yomim has met his or her obligation to do so, (d) as long as a member of the minyan present at Bet Torah recites the Kaddish, the remote participant may recite Kaddish along with him or her and thus satisfy an obligation to do so.

D. Practical and secular considerations

In addition to the religious, there are a number of practical, non-religious considerations that must all be addressed. Some of those considerations are set forth below. We refer these considerations to the appropriate Bet Torah committees for their review and comment:

1. Financial. How much will live streaming cost initially and on an on-going basis? Can Bet Torah afford the live streaming system? What sort of financial commitment must Bet Torah make?

2. Legal (secular). What are the secular legal issues that are implicated by live streaming? Must we provide notice to those who attend that they will be “on air”? Are there intellectual property issues? Are there special considerations that apply when minor children are present and leading services? How will Bet Torah enforce its prohibition against recording and re-transmitting, assuming those prohibition are put in place as part of the approval process?

3. Physical, operational, and technological. How can the necessary equipment be installed so as to be unobtrusive? Will there need to be changes made to the our building? To

our electrical and/or telecommunications systems? Where will the control equipment be maintained? Who will operate the equipment and how will that person have access at the appropriate periods of time before and after Shabbat, Yomim, and Hagim? How do we set up an automated access control system that allows passwords to be sent to users who complete the Bet Torah live stream questionnaire.⁶

E. Conclusion

As a Conservative Synagogue, Bet Torah is committed to honoring Shabbat, Yomim, and Hagim and doing what we can to enhance the spiritual experience of our members through meaningful communal prayer. We recognize our traditions and laws but view them through the lens of careful thought and analysis, striving to focus at all times on the meaning and intent of what we do and to balance competing Halachic considerations and values. And so, given that our tradition and laws permits, if not commands, us to take steps to enable those who cannot be physically present on Shabbat to share in the joy of Shabbat, Yomim, and Hagim remotely, the Ritual Committee recommends that Bet Torah permit live streaming of Shabbat and Hagim services. However, because this technology has potential to violate certain biblical laws and Rabbinic teachings, we also recommend certain conditions and limitations, set forth above in Section B. Finally, so as to ensure that we are thoughtful and considered in this process, we recommend that live streaming be done on a trial basis and that, at the conclusion of the trial, the Board of Directors reevaluates the program and makes a decision as to whether or not to implement live streaming on a permanent basis.

⁶ The Ritual Committee addressed the issue of whether or not to capture identifying information, such as user names and email addresses, of those who access the live stream. There were two views on this issue. One view was that, for security reasons and to identify those in our community who, for any number of reasons, might benefit from being contacted by Bet Torah, we should know who is accessing the live stream. The other view was that many congregants and others would feel uncomfortable sharing their identity as live stream users. Because these issues are not directly related to the mission of the Ritual Committee and are more appropriately issues for the Board, the Ritual Committee did not press for a consensus position and, instead, presents both views for the Board's consideration and resolution.

Respectfully,

Bet Torah Ritual Committee

APPENDIX I

ALTERNATIVE APPROACHES TO THE ISSUE OF ACCESSING THE LIVE STREAM

The Ritual Committee recognizes that access to the live stream is one of the most, if not the most, sensitive issues raised by the live streaming program. Therefore, the Ritual Committee considered, in addition to the access protocol it is recommending to the Board, the following four alternatives, ultimately deciding that the best approach would be one in which we put to the user the obligation to abide by our standards of use. The Ritual Committee believes that the recommended approach will protect Bet Torah's interest in ensuring that the live stream service is used in a manner consistent with Bet Torah's values and standards of use, respect and trust the user and, at the same time, minimize the burden on our clergy and administrative staff.

Here are the alternative approaches that the Ritual Committee considered:

Alternative One. Designate Rabbi Brusso as an access gatekeeper. Under this approach, the Rabbi would review all applications for live stream use and make a decision, based on his review of the application, as to the appropriateness of the request. *The Ritual Committee felt that this approach was too restrictive and too burdensome on the Rabbi and so it was rejected.*

Alternative Two. Instead of leaving the issue of access to Rabbi Brusso's discretion, with no pre-set criteria, Bet Torah would establish and publish those criteria. *The Ritual Committee felt that this approach was too restrictive and too burdensome and so it was rejected.*

Alternative Three. This alternative would be similar to Alternative Two except that the decision-makers would be a panel of three lay members of the congregation who, in consultation with Rabbi Brusso, would evaluate each request for access to the live stream. *The Ritual Committee felt that this approach was too restrictive and too burdensome and so it was rejected.*

Alternative Four. Under this alternative, any congregant may request access to the stream, with no application required and no questions to be answered. The Office would simply forward the necessary access credentials to whomever requests access to the live stream. *The Ritual Committee felt that this approach was too lax in that it would not provide for assurances from the user that Bet Torah's values and standards would be applied and so it was rejected.*