

Moshe Bleich

Rabbi Moshe Bleich is Director of Social Work Services at the Legal Aid Society of the District of Columbia.

MUSIC DURING SEFIRAH AND THE THREE WEEKS

It is generally assumed that it is forbidden to listen to music during a portion of the period of *sefirah*¹ and during the Three Weeks between the seventeenth day of Tammuz and *Tisha be-Av* (or, more precisely, until midday of the tenth day of Av). Before examining the question of possible exceptions to the prohibition when music serves a professional, educational or therapeutic purpose, it is necessary to resolve the question of whether and under what circumstances it is permitted to play or to listen to instrumental music during the balance of the year.

The Gemara, *Gittin* 7a, cites Hosea 9:1 as establishing a prohibition against enjoyment of music subsequent to the destruction of the Temple. There is significant disagreement among early authorities with regard to the ambit of that prohibition. That topic has been analyzed extensively in an English-language article authored by R. Aharon Kahn, “Music in Halachic Perspective,” that appeared in the *Journal of Halacha and Contemporary Society*, XIV (Fall, 1987), 7-46. Hence, a brief synopsis of the sources will suffice.

I. MUSIC SUBSEQUENT TO THE DESTRUCTION OF THE TEMPLE

There are four basic views with regard to the permissibility of instrumental music throughout the year:

1.) Rashi, *Gittin* 7a, s.v. *zimra*, prohibits even vocal music in a banquet or drinking hall (*beit mishta'ot*). *Tosafot*, *ad locum*, s.v. *zimra mena lan de-assur*, cite a statement of the Palestinian Talmud in commenting that it is appropriate not to play music, in situations “*she-mit'aneg beyoter*,” i.e., in situations in which the music will contribute to excessive enjoyment. *Tosafot* posit an exception to the prohibition in permitting

instrumental music in conjunction with a *se'udat mitsva* (religious celebratory repast). *Tur, Orah Hayyim* 560, as understood by *Bah* there, maintains that the statements of *Tosafot* and Rashi are complementary rather than contradictory in nature. Accordingly, music is forbidden if either of two criteria obtain: if the music is played in a banquet hall, or if the music leads to “excessive enjoyment.”²

2.) Rambam, *Hilkhhot Ta'anit* 5:14, rules that, because of ongoing mourning for the destruction of the Temple, it is always prohibited to listen to instrumental music. Rambam adds that even vocal music is prohibited if accompanied by the drinking of wine.³ Rambam further remarks that, despite the general prohibition against vocal music when accompanied by wine, it is the accepted practice to sing praises to God and songs of thanksgiving over wine.⁴

3.) In a responsum (Blau edition, number 224; Freimann edition, no. 370), cited by *Tur, Orah Hayyim* 560, Rambam rules that all music, vocal as well as instrumental, is prohibited even when not accompanied by wine. However, as explicitly noted by *Bah, ad locum*, even in this more stringent formulation, Rambam permits vocal singing of praises and thanksgiving to God. In terms of normative halakha, *Shulhan Arukh, Orah Hayyim* 560:3, accepts Rambam's position as recorded in *Hilkhhot Ta'anit* and prohibits all instrumental music as well as vocal music when accompanied by wine. As did Rambam before him, *Shulhan Arukh* adds that it is the custom of all Jews to sing praises to God and to express thanksgiving vocally over wine.

Bah, Orah Hayyim 560, rules in accordance with the position of *Teshuvot ha-Rambam* and prohibits even vocal music whether or not it is accompanied by wine. The opinion of *Bah* is accepted by *Magen Avraham* 560:9 and cited by *Mishnah Berura* 560:13.⁵

4.) Rema, *ad locum*, cites authorities (*ve-yesh omrim*) who maintain that instrumental music is prohibited only if a) the music is played on a frequent basis (*ragil bahem*), as is the wont of kings who go to sleep and wake daily to the accompaniment of musical instruments or b) the music is played in a banquet hall.⁶ Rema seems to permit vocal music even for a person accustomed to listening to or engaging in song on a regular basis.⁷ *Mishnah Berura* 560:12 emphasizes that all authorities are in agreement that, when accompanied by wine, even vocal music is prohibited.

It was because of the general prohibition against listening to instrumental music that one early authority, R. Yosef Yospe Hahn, *Yosef Omets*, no. 890, decried the practice of wealthy individuals who were

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wont to engage tutors to teach their daughters to play musical instruments. That censure is echoed in contemporary times by R. Samuel ha-Levi Woszner, *She'elot u-Teshuvot Shevet ha-Levi*, VI, no. 69.⁸

R. Yechiel Ya'akov Weinberg, *Seridei Esh, Orah Hayyim*, no. 16, sec. 20, criticizes the practice of attending musical concerts then prevalent among Jews in twentieth-century Germany. R. Weinberg remarks that the German Jews who do so rely on the opinion cited by Rema to the effect that instrumental music is prohibited only in conjunction with a banquet or on a habitual basis.⁹ R. Weinberg concludes that, although one cannot censure those who are lenient, the consensus of halakhic authorities is that recreational enjoyment of instrumental music is forbidden.¹⁰

Nevertheless, common practice clearly follows the opinion cited by Rema to the effect that instrumental music is prohibited only at banquets and to those who seek musical pleasure on a regular basis.¹¹ The prevailing custom of leniency with regard to listening to instrumental music finds support in two other opinions. *Mishnah Berura*, *Sha'ar ha-Tsiyun* 560:23, cites a gloss of Rema in his *Hagahot Mordekhai*, *Gittin* 1:1, commenting that restrictions upon instrumental music are applicable only when the music is played at a party where *only* wine is served; however, if both food and wine are provided,¹² there is no prohibition against listening to instrumental music even for one who has become accustomed to doing so.¹³ *Sha'ar ha-Tsiyun* remarks that perhaps one need not protest the conduct of those who are accustomed to listening to music at their meals since they act in reliance upon the opinion of *Hagahot Mordekhai*.¹⁴

Furthermore, although Rambam explicitly states that the prohibition is rooted in ongoing mourning for the destruction of the Temple, Me'iri, in his comments on *Gittin* 7a and *Sotah* 48a, maintains that the prohibition against music is predicated upon a concern that vulgar and lewd content may lead to frivolity (*kalut rosh*). Thus, according to Me'iri, instrumental music unaccompanied by song, or accompanied by songs whose content is neither vulgar nor lewd, is not included in the prohibition. Although halakhic codifiers do not cite this opinion (and indeed they did not have access to Me'iri's works), recent writers, such as R. Ovadiah Yosef, cite Me'iri as grounds for leniency in listening to instrumental music provided that the accompanying songs are *shirei kodesh* whose content is edifying.¹⁵

II. MUSIC DURING THE MOURNING PERIODS OF SEFIRAH AND THE THREE WEEKS

It is commonly assumed that there is a prohibition against listening to music both during the period of *sefirah* and the Three Weeks. However, *Shulhan Arukh, Orah Hayyim* 493:1-2, records only a prohibition against solemnizing a marriage and haircutting during the *sefirah* period. Similarly, *Shulhan Arukh, Orah Hayyim* 651:2, prohibits only weddings during the Nine Days, while Rema notes that it is our custom to prohibit weddings during the entire three-week period commencing with the Seventeenth of Tammuz. Despite a ruling by *Shulhan Arukh* 651:4 forbidding haircuts during the week of *Tisha be-Av* which is extended by Rema to the entire Three Weeks, no mention is made in *Shulhan Arukh* of a prohibition against playing or listening to music during these periods.

R. Aharon Epstein, *Teshuvot Kappei Aharon*, no. 52, comments upon this noteworthy omission and further notes that, despite the fact that the existence of such a prohibition is commonly presumed, there is no mention in *Shulhan Arukh* of a prohibition forbidding a mourner to listen to instrumental music.¹⁶ R. Epstein resolves these problems by pointing to the ruling of *Shulhan Arukh, Orah Hayyim* 560:3, to the effect that instrumental music is always prohibited; hence, he reasons, there was no need to record a ban in conjunction with the various periods of mourning. Although Rema, *Orah Hayyim* 560:3, does rule that for the purpose of a mitsva, e.g., enhancing the rejoicing of the bride and groom, instrumental music is permitted, *Kappei Aharon* observes that the question of whether or not a similar relaxation of the prohibition exists with regard to the bans against music during *sefirah* and the Three Weeks—and if it does, why it was omitted by *Shulhan Arukh*—is moot, since during those time periods weddings are prohibited as well.¹⁷

As we've seen, no restriction regarding music during these various periods of mourning is recorded by *Shulhan Arukh. Magen Avraham*, though, both in his comments on the laws of *sefirah*, *Orah Hayyim* 493:1, and on the laws of the Three Weeks, *Orah Hayyim* 651:10, declares that it is prohibited to engage in dancing (*rikudin u-meholot*) during those periods.¹⁸ *Magen Avraham's* comments are cited by *Mishnah Berura* 493:3 and 651:16. *Mishnah Berura* similarly addresses only the issue of dancing, but fails to clarify whether or not it is permitted to play musical instruments.¹⁹ *Arukh ha-Shulhan* 493:2 asserts that, since dancing is prohibited during these periods, *a fortiori*, it is prohibited to

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play musical instruments. A contemporary scholar, R. Menashe Klein, *Mishneh Halakhot*, VIII, no. 188, fails to cite the comments of *Arukh ha-Shulhan*²⁰ but similarly observes that if dancing is prohibited it is certainly also prohibited to play instrumental music during this period. According to those authorities, although there may well be a general prohibition against music, during the periods of *sefirah* and the Three Weeks there is an additional and more encompassing prohibition against listening to instrumental music or engaging in dancing even when unaccompanied by music because of the mourning constraints observed during those periods.²¹

It is noteworthy that *Mishnah Berura* 658:2 makes no mention of playing music on *Tisha be-Av* but does state that on the tenth day of Av it is prohibited to play instrumental music before midday. R. Eliyahu Schlesinger, *Eileh Hem Mo'adai*, p. 305, asserts that since *Mishnah Berura* refers only to the tenth day of Av, the day on which the destruction of the Second Temple was completed, it may be inferred that music is permitted on other days of mourning. R. Schlesinger's contention appears to be far-fetched and not at all compelling since the consensus of halakhic authorities, *Orah Hayyim* 658:1, is that the mourning observed on the tenth of Av is less stringent than mourning during the preceding nine days. Indeed, some authorities maintain that the only interdiction applicable on the tenth of Av is the one against eating meat and drinking wine, whereas other strictures governing conduct during the Nine Days are inapplicable on the tenth of Av.²² It may, however, be argued that the mourning of the tenth of Av is more severe than mourning during *sefirah*,²³ and hence that it cannot, *ipso facto*, be concluded that *Mishnah Berura* would necessarily prohibit instrumental music during *sefirah* as well.

Among contemporary rabbinic scholars who discuss this topic, Dayan Yitshak Weisz, who writes about it in *Teshuvot Minhat Yitshak*, I, no. 111, is the most prominent. Curiously, R. Weisz does not cite the comments of either *Mishnah Berura* or *Arukh ha-Shulhan* prohibiting musical instruments, but observes that playing musical instruments during *sefirah* and the Three Weeks is not acceptable because it is the common practice (*minhag*) to refrain from playing music during those periods. R. Weisz notes that even though a particular practice may technically be permitted, if the community adopts a stringency regarding the practice in question, it becomes prohibited as a matter of law.²⁴

Minhat Yitshak traces the custom of not playing instrumental music during *sefirah* to the comments of *Da'at Kedoshim*, cited by R. Shalom Mordecai Schwadron, *Da'at Torah*, *Orah Hayyim* 493:1. *Da'at*

Kedoshim observes that even though it is permissible to celebrate a marriage and play music on *Lag be-Omer*, one should be careful to conclude the wedding feast during the daylight hours in order to ensure that music not be played on the night of the thirty-fourth day of the Omer when the full mourning restrictions of *sefirah* are again applicable. It is thus evident that there has long been an established practice not to permit the playing of instrumental music during *sefirah*.

Minhat Yitshak also draws an inference similar to that drawn by *Arukh ha-Shulhan* and *Mishnah Berura* from the comments of *Magen Avraham*, *Orah Hayyim* 493:1, who prohibits dancing during *sefirah*. Although, as previously noted, *Magen Avraham* makes no reference to musical instruments, it may be inferred that he regards instrumental music to be prohibited because music certainly leads to “excessive joy” (*simbah yeteirah*), which *Magen Avraham* regards as prohibited during *sefirah*.

R. Weisz adduces further proof that the prohibition against *rikudin u-meholot* encompasses the playing of or listening to musical instruments from the comments of *Pri Megadim*, *Eshel Avraham*, *Orah Hayyim*, 651:10. Noting the prohibition against dancing during the Three Weeks, *Pri Megadim* poses the question of whether a professional musician is permitted to play instrumental music in a non-Jewish banquet hall during that period. *Pri Megadim* rules that a person acting in a professional capacity may play music for non-Jews during the Three Weeks. R. Weisz notes that *Pri Megadim*'s permissive ruling is limited by *Derekh ha-Hayyim*, *Dinim ha-Nohagim me-Yud Zayin be-Tammuz ad le-ahar Tisha be-Av*, no. 1, to the period between the seventeenth of Tammuz and Rosh Hodesh Av, but that during the Nine Days playing music is prohibited even for purposes of earning a livelihood. *Pri Megadim*'s ruling is accepted as normative by R. Moshe Schick, *She'elot u-Teshuvot Maharam Schick*, *Yoreh De'ah*, no. 368; R. Simcha Bamberger, *Zekher Simbah*, no. 67; and by R. Shlomo Ganzfried, *Kitsur Shulhan Arukh* 122:1.²⁵

There is explicit reference in *Pri Megadim*'s ruling to a ban on instrumental music, but only during the Three Weeks. Hence, it may be argued that this prohibition is limited solely to that period and does not apply during *sefirah*. However, R. Weisz notes that the mourning prohibitions of *sefirah* and of the portion of the Three Weeks beginning with the seventeenth of Tammuz and continuing until the *Shabbat* before *Tisha be-Av* (*shevu'a she-hal bo Tisha be-Av*) are only matters of custom, whereas mourning restrictions during the week of *Tisha be-Av* have a talmudic basis, as recorded in *Ta'anit* 29b. It should therefore be presumed that any mourning restrictions applicable during the Three Weeks

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prior to the week of *Tisha be-Av* are equally applicable during *sefirah*. Accordingly, argues R. Weisz, instrumental music must be regarded as prohibited both during *sefirah* and during the Three Weeks.

R. Eliyahu Schlesinger, *Eleh Hem Mo'adai*, pp. 296-297 and 307, takes sharp issue with the latter contention of R. Weisz and argues that mourning restrictions during the Three Weeks are more stringent than during *sefirah*. R. Schlesinger concedes that the mourning of *sefirah*, since it is not recorded in the Gemara, is merely a matter of custom. However, he contends, the mourning restrictions practiced during the early part of the Three Weeks also have a talmudic basis.²⁶ The Mishna *Ta'anit* 26b declares that with the advent of the month of Av joy should be minimized. Although there is no formal talmudic legislation requiring mourning from the beginning of the Three Weeks until the *Shabbat* prior to *Tisha be-Av*, R. Schlesinger asserts that the Ashkenazic custom is effectively to expand the mourning period explicitly established by the Gemara to the entire three-week period. In contradistinction, there is no talmudic reference to any form of mourning during the *sefirah* period.²⁷ Moreover, as has also been noted by R. Ovadiah Yosef, *Yehaveh Da'at*, III, no. 30, R. Schlesinger adds that the three week period commemorating the destruction of the Temple is certainly a period of more intense mourning than the mourning for the students of R. Akiva who perished during the *sefirah* period. R. Yosef finds support for that view in the remarks of Ramban, *Perush al ha-Torah*, Vayikra 23:36.²⁸

R. Schlesinger disputes R. Weisz's conclusion that music is prohibited during *sefirah*, but concedes that it is prohibited during the Three Weeks. However, R. Shlomo Dichovsky, in an article published in *Torah she-be'al Peh*, XLI (2000) and *Tehumin*, XXI (2001) and reprinted in R. Schlesinger's *Eleh Hem Mo'adai*, pp. 301-304, argues that not all forms of music are prohibited, even during the Three Weeks. R. Dichovsky argues that the principal source prohibiting music during the Three Weeks is the comment of *Pri Megadim*, *Eshel Avraham* 651:10, discussing whether it is permissible for a Jew to play music in a non-Jewish banquet hall during the Three Weeks. As earlier noted, that discussion seemingly assumes that it is ordinarily prohibited to play instrumental music during this period. R. Dichovsky asserts that since apparently there is no earlier source prohibiting music, *Pri Megadim's* comment is innovative. R. Dichovsky observes that *Pri Megadim* states in the introduction to his work that wherever he suggests something innovative he has inserted the sign of a hand or a star to indicate to the reader that what follows is a novel ruling (*ve-samti etslo shoshan ve-tavnit yad lomar re'eh zeh*

hadash hu). With regard to the discussion of music, *Pri Megadim* provides no such symbol. From the omission it may be inferred that the ruling is not novel. Accordingly, R. Dichovsky argues that *Pri Megadim* intended only to prohibit music in conjunction with a banquet since the function of such music is to promote and enhance dancing, a matter that does not at all constitute a novel restriction but is merely an application of *Magen Avraham's* ruling prohibiting dancing. Thus, concludes R. Dichovsky, music that does not encourage dancing is permitted even during the Three Weeks.²⁹ However it seems to this writer that if *Pri Megadim* is understood as prohibiting all forms of instrumental music, that ruling is similarly non-innovative since, as *Arukh ha-Shulhan* argues, it is encompassed in the prohibition against dancing.

Despite the foregoing, the consensus of halakhic authorities is that music is forbidden during these periods. R. Moshe Feinstein, *Iggerot Moshe, Orah Hayyim*, I, no. 166, *Yoreh De'ah*, II, no. 137 and *Orah Hayyim*, III, no. 87, states that although the common practice is to rely on the opinion of the Rema in permitting instrumental music throughout the year other than in conjunction with a banquet or on a frequent and regular basis, the custom is to be stringent during *sefirah* in accordance with the view of Rambam and *Shulhan Arukh* who prohibit listening or playing instrumental music at all times. R. Feinstein, *Iggerot Moshe, Orah Hayyim*, IV, no. 21 sec. 4, also declares that the restrictions of *sefirah* apply during the Three Weeks as well and that even those who permit instrumental music throughout the year are in agreement that it is the custom to be stringent in this regard during both intervals. A similar analysis is presented by R. Ovadiah Yosef, *Yehaveh Da'at*, VI, no. 34.

Although R. Woszner, *Shevet ha-Levi*, VI, no. 69 and VIII, no. 127, prohibits listening to music throughout the year, in the latter responsum he makes a point of emphasizing that listening to music during the Three Weeks is explicitly prohibited by *Shulhan Arukh, Orah Hayyim*, 651. (Presumably, his reference is not to *Shulhan Arukh* but to the previously cited commentary of *Magen Avraham*.) In a letter responding to R. Schlesinger's leniency in permitting music during *sefirah*, published in *Eleh Hem Mo'adai*, no. 164, p. 97, R. Woszner asserts: "With regard to the custom during the *sefirah* period, I am only capable of testifying to what I have seen and also heard from great scholars (*ge'onei olam*) who are meticulous in the custom of all the countries and who distance themselves from this [practice] and it is not for us to be lenient in this or in similar matters" (*le-hakel rosh ba-zeh u-ka-yotsei bo*).³⁰

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III. VOCAL MUSIC

As has already been noted, there is some controversy regarding whether vocal music, i.e., singing, is permitted during *sefirah* and the Three Weeks. According to *Shulhan Arukh*, vocal music is generally permitted throughout the year, provided that it is not accompanied by the drinking of wine. With regard to these periods of mourning there is, however, some disagreement with regard to the permissibility of singing. R. Yosef ben Moshe, *Leket Yosher* (Jerusalem, 1964), ed. Ya'akov Freimann, *Orah Hayyim*, p. 97, reports that during *sefirah* R. Israel Isserlein, the author of *Terumat ha-Desben*, refrained from singing even the hymn “*Eliyahu ha-Navi*” on *motsa'ei Shabbat* with the exception of the occasions on which *Lag be-Omer* occurred on a Sunday.³¹ *Leket Yosher*, p. 106, similarly reports that *Terumat ha-Desben* did not sing *zemirot* during the Three Weeks. R. Yosef Yospe Hahn, *Yosef Omets*, no. 601, p. 128, writes that even on *Shabbat* during the Three Weeks and “certainly” (*kol she-ken*) during *sefirah*, *zemirot* should be sung only in a low voice or to a tune that does not generate joyfulness.³² Quite evidently, *Yosef Omets*, disapproved of vocal music during times of mourning.³³ R. Ya'ir Bacharach, author of *Havot Ya'ir*, in his *Mekor Hayyim*, *Orah Hayyim* 651:1, (which has been published only recently), similarly rules that it is prohibited both to play instrumental music and to engage in singing during the Nine Days³⁴ other than in conjunction with a *se'udat mitsva*. It may, however, be the case that *Havot Ya'ir* would permit vocal music on *Shabbat*, since *Shabbat* meals are considered to be *se'udot mitsva*.³⁵ In sharp contradistinction, *Sedei Hemed*, *Ma'arekhet Bein ha-Metsarim*, no. 1, sec. 10, expresses amazement at the practice of some communities in which the custom was to forbid singing during the entire three-week period, including *Shabbat*.

R. Zevi Cohen, *Bein Pesah le-Shevu'ot* 15:5, states that during *sefirah* one should not sing songs that create an atmosphere that might arouse people to dance. Although R. Cohen (*ibid.*, note 5) reports that this opinion is based on the view of R. Shlomo Zalman Auerbach, he concedes that there is no recorded halakhic source that supports this thesis. R. Cohen does permit vocal singing that is not conducive to dancing.³⁶

It must be added that none of the classical commentaries on *Shulhan Arukh* give any indication whatsoever of a ban against vocal music during these periods.³⁷ Thus, although the consensus of opinion is that a prohibition against instrumental music may be inferred from *Magen Avraham*'s stricture against dancing, it appears that vocal music is not included in the prohibition against dancing.³⁸

Nevertheless, *Nit'ei Gavri'el* 15:10 claims that currently it is the custom to not sing during the Three Weeks or at least to refrain from singing during the nine-day period commencing with *Rosh Hodesh Av*. *Nit'ei Gavri'el*, *Hilkhot Pesah*, III, 53:10, similarly claims that it is the custom to not engage in vocal singing during *sefirah* as well. Custom, by its nature, is often local. Hence it is difficult to categorize *Nit'ei Gavri'el's* support of custom as entirely contrafactual. Nevertheless, simple empirical observation serves to establish that the “custom” is not widespread and certainly not universal.

Nevertheless, *Nit'ei Gavri'el's* report does have a basis in a statement of R. Chaim Pelaggi, *Mo'ed le-kol Hai* 10:19. That authority declares that educators should not teach songs during the Three Weeks other than melancholy ones which “break the heart,” and that it would be preferable not to teach even such songs until after the period of mourning for the destruction of the Temple has passed. R. Pelaggi's comments are cited by *Kaf ha-Hayyim*, *Orah Hayyim* 651:41. R. Chaim David Halevi, *Mayyim Hayyim*, no. 35, reprinted in his *Moreh le-Rabbim*, ed. Moshe Ohamai, no. 73, accepts R. Pelaggi's comments as authoritative.³⁹ However, both the consensus of halakhic opinion and common practice are not in accordance with the stringent position of R. Chaim Pelaggi.

IV. TAPED MUSIC

As has been shown, the consensus of halakhic opinion is to prohibit instrumental music during the mourning periods of *sefirah* and the Three Weeks, while the question of vocal music is a matter of some dispute. The status of taped music, as distinct from live music, requires further examination.

Sounds emanating from a radio are not identical to those produced by the source of those sounds. Radio transmission transforms sounds and converts them to sounds electronically produced.⁴⁰ Thus, it might conceivably be argued that the radio is not at all a musical instrument and hence the sounds it produces are not music or, conversely, if the radio is itself a musical instrument, even vocal sounds broadcast over a radio are to be regarded as instrumental sounds.⁴¹

R. Moshe Feinstein, *Iggerot Moshe*, *Orah Hayyim*, I, no. 166, does not regard the radio itself as a musical instrument. He rules, however, that instrumental music played over the radio is considered to be instrumental music whereas singing transmitted by the radio is considered to be

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vocal music. R. Feinstein concludes that responsum by stating that even those who are lenient with regard to instrumental music throughout the year nevertheless prohibit listening to instrumental music over the radio during the *sefirah* period. It may be inferred from R. Feinstein's comments that listening to vocal music over the radio during *sefirah* is permitted. Presumably, the selfsame considerations apply to taped music.

R. Waldenberg, *Tsits Eli'ezer*, XV, no. 33, sec. 2, similarly does not regard the radio as a musical instrument and, accordingly, he accepts R. Feinstein's distinction between instrumental and vocal music heard on the radio with regard to the general prohibition regarding music. Nevertheless, R. Waldenberg rules that this distinction is not applicable during the mourning periods of *sefirah* and the Three Weeks. R. Waldenberg argues that, since it is prohibited to dance during *sefirah* and the Three Weeks, even vocal music that has been taped is included in that prohibition. Curiously, R. Waldenberg does not seem to prohibit vocal music during these periods; rather he prohibits *only* vocal music that has been taped. Although vocal music is not included in the general prohibition regarding music during these periods because it does not serve to encourage dancing, R. Waldenberg finds it self-evident that taped vocal music must be regarded differently because it serves as impetus to dancing.⁴²

Some authorities, however, maintain that even singing, when taped, is considered to be instrumental music. Those authorities apparently maintain that, since the sounds actually heard are electronically produced, by the radio apparatus, the music must be considered to be instrumental in nature.⁴³ According to those who maintain that even taped vocal music must be considered to be instrumental music, it follows that listening to any form of taped or recorded music during *sefirah* or the Three Weeks is forbidden.

There do, however, appear to be other grounds for leniency with regard to taped music even if it is considered to be instrumental music. R. Ya'akov Breisch, *Teshuvot Helkat Ya'akov, Orach Hayyim* (Tel Aviv, 1992), no. 64, sec 2, asserts that there is reason to be lenient throughout the year with regard to listening to music on the radio (and presumably to taped music as well) since radios were not in existence at the time at which in commemoration of the destruction of the Temple the Sages promulgated a general edict against listening to music. R. Breisch argues that radios are not simply another genre of musical instruments because they are distinguishable from other types of instruments for two reasons: 1) when listening to a radio (as well as tapes or CD's) one cannot see the singer; and 2) music broadcast over the radio is a novel

form of music,⁴⁴ qualitatively different from the type of music that existed in the days of the Sages and hence was not included in their prohibition. A principle of strict construction is applied to rabbinic legislation, i.e., despite the cogency of applying the prohibition in situations unknown at the time the legislation was promulgated, anything that was not formally banned is not prohibited. Although he is not cited by name, R. Breisch's contention is rejected by *Devar Sha'ul* and *Pe'at Sadekha* who maintain that taped music is certainly encompassed within the prohibition of the Sages banning instrumental music.⁴⁵

R. Wozner, *Shevet ha-Levi*, II, no. 57, sec. 2, VI, no. 69, and VIII, no. 127, sec. 2, asserts that it can be inferred from the language employed by Rambam that even recorded music was included in the prohibition of the Sages banning instrumental music. Rambam, *Hilkhot Ta'anit* 5:14, states: "And [the Sages] also decreed that we should not play musical instruments or any type of music or anything that causes musical sound to be heard; it is prohibited to rejoice with them and it is prohibited to listen to them because of the Destruction and [it is prohibited to listen] even to vocal music when accompanied by wine." R. Wozner questions the need for the seemingly redundant phrase "or anything that causes musical sound to be heard" (*ve-kol mashmi'ei kol shel shir*) since Rambam has already stated that all forms of music are forbidden. R. Wozner concludes that Rambam found it necessary to assert that the original prohibition was global in nature and expressly prohibited all forms of instrumental music, including forms of music not yet in existence in talmudic times.⁴⁶

R. Shlomo Zalman Auerbach also refuses to accept R. Breisch's thesis. R. Auerbach, *Halikhot Shlomo*, I, chap 13, no. 18, *Devar Halakha*, no. 28, rules that it is forbidden to use a musical alarm clock to rouse oneself from sleep. R. Auerbach reasons that even if, as Rema, *Orah Hayyim* 560:3, rules, instrumental music is permitted on an occasional basis, musical alarm clocks, which are utilized on a routine and even daily basis, are similar in nature to the practice of monarchs who made use of music to awaken them in the morning and to induce sleep at night. All authorities agree that such a practice is prohibited.

Nevertheless, it is assumed by many that taped music is permissible. However, other than *Helkat Ya'akov*, the only authorities who have stated that position in writing are R. Ovadiah Yosef, *Yehaveh Da'at*, I, no. 45⁴⁷ and R. Chaim David Halevi, *Aseh Lekha Rav*, III, no 4.

However, R. Ovadiah Yosef, *Yehaveh Da'at*, III, no. 30 and VI, no. 34, one of the few authorities who espouses the position of *Helkat*

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Ya'akov in permitting taped music throughout the year, asserts that it is forbidden to listen to taped music during *sefirah* and the Three Weeks. R. Yosef observes that during those periods manifold forms of “rejoicing” are also forbidden as evidenced by the prohibition against celebrating marriages during those periods. Accordingly, he argues, just as dancing is prohibited during those periods because it is a form of excessive rejoicing, any form of music, even if taped, is prohibited during these periods of mourning because it is also a form of excessive rejoicing.⁴⁸ In effect, R. Yosef asserts that although a tape-recorder is not a musical instrument, and therefore taped music is not music, it is nevertheless conducive to rejoicing in a manner similar to dancing.⁴⁹ Nevertheless, taped music is forbidden only when dancing is not permitted.

In conclusion, the consensus of halakhic opinion is that taped music is forbidden during *sefira* and the Three Weeks. Listening to taped vocal music is a matter of some controversy.⁵⁰

NOTES

1. The period of mourning is limited to thirty-three days of the forty-nine day *sefirah*. There are variant customs with regard to which thirty-three days are observed as days of mourning. See *Bi'ur Halakha, Orah Hayyim* 493:3.
2. Although it is clear that instrumental music is prohibited under these circumstances according to both Rashi and *Tosafot*, it is not readily evident whether or not those authorities would regard vocal music as prohibited as well. For a more complete analysis of this question, see R. Kahn, “Music in Halachic Perspective,” pp. 30-32.
3. Rambam is understood in this manner by *Tur, Orah Hayyim* 560. For other interpretations of Rambam’s position see R. Ovadiah Yosef, *Yehaveh Da’at*, I, no. 45 and R. Kahn, pp. 17-19.
4. Presumably, the practice of reciting praises over wine is based on the assumption that mourning the destruction of the Temple is not a constraint preventing expression of gratitude to God. Cf. R. Kahn, pp. 11-12, note 4.
5. *Magen Avraham* 560:10 prohibits all music, including vocal music, except for *Shabbat zemirot* that are sung as praise to God. *Magen Avraham*’s position seems to be more extreme than that of Rambam (even in his responsum) who apparently maintains that all songs of thanksgiving and praise of God are permitted. R. David Abraham of Buczacz, *Eshel Avraham, Tinyana, Magen Avraham* 560:9, indicates that *Magen Avraham*’s limitation of the category of songs of praise and thanksgiving to *Shabbat* songs is a pietistic stringency. See also *Yehaveh Da’at*, I, no. 45. Nevertheless, *Magen Avraham*’s concluding remark, *viz.*, “other *piyyutim* are prohibit-

- ed,” would indicate that *Magen Avraham*’s statement regarding *zemirot* is not merely a *middat basidut* but a matter of normative halakha. For a further discussion of the position of *Magen Avraham* see R. Nathan Gestetner, *She’elot u-Teshuvot Le-Horot Natan*, IV, no. 45.
6. The position of Rema is apparently predicated upon the position of Rashi and *Tosafot*, *Gittin* 7a, as understood by *Tur* 560. That understanding of Rashi and *Tosafot* is subject to dispute. See, for example, R. Moshe Feinstein, *Iggerot Moshe, Orah Hayyim*, I, no. 166, who argues that the position of Rashi and *Tosafot* can be explained in a manner differing from that of Rema. See also the comments of *Bah, Orah Hayyim* 560, who understands Rashi and *Tosafot* as prohibiting even vocal music when preformed on a regular and frequent basis.
 7. Rema does not stipulate the frequency that establishes the practice as “habitual” or “regular” (*ragil*). R. Shmuel Baruch Genut, *Shilhei de-Kaita* (Israel, 2001), p. 40, cites an oral report of a ruling attributed to R. Samuel ha-Levi Wozner defining “habitual” as once in three days. R. Genut further reports that, according to R. Chaim Kanievski, *ragil* is to be defined as one who listens to musical instruments on a regularly scheduled basis (*be-keviyut*).
 8. For a defense of the practice see R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, I, no. 333 and R. Eliezer Yehudah Waldenberg, *Tsits Eli’ezer*, XV, no. 33, sec. 1. Both authorities also disagree with R. Hahn’s assessment that the purpose of such instruction is solely enjoyment of music. They assert that the purpose of music instruction, at least in contemporary times, is not necessarily to promote pleasure but to develop proficiency as a musician and thereby to acquire a means of earning a livelihood. Cf. R. Avraham Horowitz, *She’elot u-Teshuvot Kinyan Torah be-Halakha*, II (Strassberg, 1987), no. 99, sec. 1, who (probably correctly) assumes that, in Jewish schools, music studies are undertaken for pleasure and not for professional purposes (*le-shahtsanut be-alma*).
 9. Cf. R. Moshe Feinstein, *Iggerot Moshe, Yoreh De’ah*, II, no. 137, who argues that, according to Rema, instrumental music is prohibited at any public gathering at which music is designed to promote “*simhah yeteirah*” or excessive rejoicing. It appears that concerts are of that nature. See also R. Sha’ul Kossowsky-Shachor, *Devar Sha’ul, Sotah*, no. 73, who advances a similar argument.
 10. Cf. *Tsits Eli’ezer*, XV, no. 33, sec. 1, who notes that the normative halakha is in accordance with the position of Rema.
 11. See, for example, *She’elot u-Teshuvot Kappei Aharon*, no. 52 and *Tsits Eli’ezer*, XV, no. 33, sec. 1.
 12. Similarly, when there is no wine, and thus no party, it appears that *Hagahot Mordekhai* would permit instrumental music.
 13. For differing rationales underlying this opinion see *Sha’ar ha-Tsiyun, ad locum* and *Yehaveh Da’at*, I, no. 45.
 14. R. Ya’akov Breisch, *She’elot u-Teshuvot Helkat Ya’akov* (Tel Aviv, 1992), *Orah Hayyim*, no. 64, sec. 2, states that *Mishnah Berura* cites *Hagahot Mordekhai* as establishing the normative rule. However, a careful reading of *Mishnah Berura* would indicate that *Mishnah Berura* does not rule in accordance with the position of *Hagahot Mordekhai* but simply cites that view as

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an argument justifying failure to protest the practice of those who listen to music while they partake of meals. R. Breisch's language is imprecise.

15. See *Yehaveh Da'at*, I, no. 45 and VI, no. 34.
16. R. Epstein notes that although Rema, *Yoreh De'ah* 391:3, permits a mourner to attend a wedding ceremony, he prohibits the mourner from being present during nuptial festivities accompanied by musical instruments. *Kappei Aharon* observes that prohibiting attendance while music is being played at a wedding does not necessarily lead to the conclusion that listening to instrumental music other than at a wedding is prohibited. Music at a wedding certainly generates a far greater degree of joy than instrumental music in other contexts. Hence, there is no source in *Hilkhot Aveilut* specifically indicating that a mourner is forbidden to listen to instrumental music.
17. This analysis would appear to be cogent according to *Shulhan Arukh* who prohibits instrumental music under virtually all circumstances. However, according to Rema who prohibits instrumental music only when played in a banquet hall or on a frequent and regular basis, it would appear that the prohibition against listening to music during *sefirah* and the Three Weeks is broader in nature and should have been recorded by Rema. *Kappei Aharon* explains the omission by asserting that even Rema maintains that the halakhic consensus is always to prohibit instrumental music whereas the opinion limiting the prohibition to music in a banquet hall and to playing music on a regular and frequent basis is only a minority view (*yesh omrim*). Cf. *Tsits Eli'ezer*, XV, no. 33, sec. 1.

Moreover, the issue is relevant with regard to music in conjunction with a *se'udat mitsva* other than a wedding. *Kappei Aharon's* analysis is consistent with his understanding that Rema permits music only at a wedding but not at other *se'udot mitsva*. That view was earlier formulated by *Kitsur Sefer Hareidim*, chap. 5, "Mitzvot Aseh ve-lo Ta'aseh mi-Dirvei Sofrim ha-Teluyot be-Oznayim," no. 7. See also *Hayyei Adam* 137:3. However, other authorities understand Rema as permitting music at all *se'udot mitsva*. See *Piskei Teshuvot* 560:12.

For sources regarding the controversy concerning the playing of music at a *se'udat mitsva* during *sefirah* see *Piskei Teshuvot* 493:5. For sources concerning a similar controversy regarding playing of music at a *se'udat mitsva* during the Three Weeks, see *Piskei Teshuvot* 651:13. *Piskei Teshuvot*, *loc. cit.*, asserts that all authorities agree that it is prohibited to play musical instruments even at a *se'udat mitsva* during the Nine Days.

18. For a definition of the various types of dancing that are prohibited as *rikudin u-meholot* see R. Zevi Cohen, *Bein Pesah le-Shevu'ot* (Jerusalem, 1984), chap 15, note 1. Cf. the comments of an anonymous scholar cited by R. Eliyahu Schlesinger, *Eleh Hem Mo'adai*, no. 144, p. 304, to the effect that the prohibition against *meholot* explicitly denotes a ban against playing musical instruments. See, however, the analysis of R. Schlesinger, *ibid.*, p. 305, who cogently demonstrates that this definition of *meholot* is far-fetched.
19. *Kappei Aharon*, no. 52, raises the obvious objection that since *Magen Avraham* 560:9 follows *Bab* in ruling that instrumental and even vocal music is always prohibited, it should be unnecessary to specifically prohibit

dancing during the *sefirah* period and the Three Weeks. *Kappei Aharon* offers two possible explanations: (1) *Magen Avraham* intends to declare that not only is music prohibited during these periods as it is throughout the entire year, but even dancing, without musical accompaniment, which is normally permitted, is prohibited. (2) Although *Magen Avraham* himself rules in accordance with the opinion that music is prohibited throughout the year, *Magen Avraham* was aware that the common practice is to rely on Rema in permitting instrumental music unless played in a banquet hall or on behalf of a person accustomed to listening to music. Accordingly, *Magen Avraham* asserts that, even according to the common practice, during the mourning periods of *sefirah* and the Three Weeks, dancing—and surely music as well—is prohibited.

20. See, however, R. Ephraim Greenblatt, *No'am*, XI (5728), 139, who cites *Arukh ha-Shulhan* as an unequivocal source establishing a prohibition against instrumental music during *sefirah*. R. Greenblatt notes that, although *Mishnah Berura* prohibits dancing, he does not make any explicit reference to music. It should be noted that *Arukh ha-Shulhan, Orach Hayyim* 651:8, also declares that it is prohibited to dance in the Three Weeks but makes no mention of playing musical instruments. It would appear that, since *Arukh ha-Shulhan, Orach Hayyim* 493:2, declares that when dancing is prohibited, *a fortiori*, musical instruments are also prohibited, it follows that, in light of the ruling of *Arukh ha-Shulhan* 651:8 prohibiting dancing during *sefirah*, it is self-understood that he regards musical instruments to be prohibited as well.
21. See *Kappei Aharon*, no. 52 and R. Betsalel Stern, *She'elot u-Teshuvot be-Tsel ha-Hokhmah*, VI, no. 61, sec. 12. *Be-Tsel ha-Hokhmah* further asserts that even according to *Shulhan Arukh*, who prohibits instrumental music throughout the year, there is an additional prohibition against playing music during these mourning periods. For a practical ramification of the question of whether there are one or two prohibitions with regard to playing music during these periods see *Be-Tsel ha-Hokhmah, ad locum*.
22. See *Bi'ur Halakha, Orach Hayyim*, 658, s.v. *ad hatsot ha-yom*.
23. See below for a discussion of the prohibitions applicable during the Three Weeks and whether those restrictions are stricter than the prohibition applicable during *sefirah*.
24. R. Weisz notes that *Hatam Sofer*, in *She'elot u-Teshuvot Hatam Sofer, Yoreh De'ah*, no. 107 (cited in *Pit'hei Teshuvah, Yoreh De'ah* 115:3), writes that a prohibition arising as a result of *minhag* has the status of a vow or *neder* and hence violation of such a prohibition is actually a violation of a biblical prohibition. The general rule is that, if a matter in question is rabbinically prohibited, when in doubt one may be lenient in accordance with the principle *safek de-rabbanan le-kula*. However, according to *Hatam Sofer*, if the issue in question is in fact not even rabbinically forbidden but prohibited merely as a stringency on the basis of custom or *minhag*, the transgression is biblical in nature; hence if one is in doubt regarding its permissibility, the matter is prohibited on the basis of the principle of *safek de-oraita le-humra*.

See also R. Schlesinger, *Eleh Hem Mo'adai*, pp. 296 and 306, who, in the concluding remarks of the responsum, observes that R. Weisz seems to maintain that listening to music during these periods is a mere stringency

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and does not rise to the status of an act that is prohibited by virtue of custom. Cf., however, the comments of an anonymous scholar, cited *ad locum*, p. 306, who rebuts R. Schlesinger's comments and asserts that *Minhat Yitshak* did not retract his view that the custom is not to listen to music during these periods and hence a violation of the custom is similar in stringency to violation of a vow.

25. A fuller discussion of these sources can be found in this writer's discussion of playing music for professional purposes in *Ten Da'at vol. XVIII, January 2006, pp.22-26*.
26. R. Joel Schwartz, *Aveilut ha-Hurban* (Jerusalem, 1984), p. 81, note 21 (1), also maintains that the prohibition against playing music is less stringent during *sefirah* than during the Three Weeks but fails to cite sources in support of that position.
27. R. Schlesinger also quotes R. Benjamin Zilber, *Az Nidberu*, X, no. 23, who remarks that it is not clear that there is a particular practice prohibiting musical instruments during *sefirah* since instrumental music is prohibited throughout the year. Accordingly, R. Schlesinger asserts that, although there is one authority, *viz.*, *Pri Megadim*, who does prohibit music during the Three Weeks, there is no clear source prohibiting instrumental music during *sefirah*. R. Schlesinger, p. 304, further observes that *Kitsur Shulhan Arukh* 122:1 rules that instrumental music is prohibited during the Three Weeks, whereas in conjunction with the laws pertaining to *sefirah*. *Kitsur Shulhan Arukh* 120:9 states only that dancing is prohibited. The omission by *Kitsur Shulhan Arukh* of mention of a prohibition against instrumental music during *sefirah* would indicate that he maintains that such music is permitted.

R. Schlesinger, however, fails to cite the comments of *Arukh ha-Shulhan* 493:2 who clearly prohibits musical instruments during *sefirah*. Citing R. Yehoshua Menahem Aaronberg, *She'elot u-Teshuvot Devar Yehoshu'a*, III, no. 63, R. Schlesinger, p. 310, notes that *Magen Avraham* prohibits only dancing during *sefirah*. R. Aaronberg and R. Schlesinger do not accept the contention that instrumental music is subsumed in the prohibition against dancing.

In a responsum published as an addendum to R. Schlesinger's *Eleh Hem Mo'adai*, p. 311, R. Yisra'el Pesach Feinhandler argues that *Arukh ha-Shulhan*'s ruling against instrumental music is limited to music played in conjunction with a meal and is banned because it may prompt listeners to dance. That argument is unconvincing since the language of *Arukh ha-Shulhan* who states that "if dancing is prohibited, certainly musical instruments are prohibited" appears to refer to all forms of instrumental music. See also R. Aaronberg who employs a similar analysis in explaining the comments of *Arukh ha-Shulhan*, *Yoreh De'ah* 391:12, and who maintains that there is no particular prohibition against music applicable to a mourner and that only music that prompts dancing is prohibited to a mourner.

28. R. Ovadiah Yosef endeavors to demonstrate that *sefirah* is not a period of "full mourning" like the Three Weeks are since the consensus of opinion is to permit recitation of the *she-hebriyanu* blessing during *sefirah* but to prohibit the recitation of the blessing during the Three Weeks. It would seem to this writer that this argument is inconclusive since it is not necessarily because of mourning considerations that the *she-hebriyanu* blessing is not

- recited during the Three Weeks since, in general, a mourner is permitted to recite the *she-hebiyanu*. Rather, it would appear, that since this blessing is an expression of thanksgiving for being alive at a particular time, it is not appropriate to recite the formula of that blessing during the Three Weeks which is a period of profound calamity. It would appear that this conclusion is supported by *Hitorerut Teshuvah* (Jerusalem, 1990), III, no. 362, who notes that, although no mourning restrictions apply after midday on the tenth of Av, nevertheless, one may not recite the *she-hebiyanu* blessing throughout the entire day since one should not express joy for being alive on the day on which the Temple was destroyed. Cf, however, *Piskei Teshuvot*, no. 658, note 2, who cites an opposing view permitting recitation of the *she-hebiyanu* blessing immediately after the conclusion of *Tisha be-Av* even though mourning restrictions continue to be applicable until midday of the tenth of Av. For a further discussion regarding recitation of *she-hebiyanu* on the tenth of Av see R. Yirmiyahu Kaganoff, “Halakha Talk,” *Yated Ne’eman*, 7 Av, 5765 – Aug. 12, 2005, p. 43.
29. In the concluding section of his article, R. Dichovsky does suggest that since there is a talmudic source for stringency during the Nine Day period, one should minimize joy during that time and hence, in order to intensify mourning for the Temple, it is appropriate not to listen to any type of music during the Nine Days.
30. For a list of additional sources prohibiting music during *sefirah* see *Piskei Teshuvot* 493:4 and *ibid.*, note 30; R. Zevi Cohen, *Sefer Bein Pesah le-Shevu’ot*, chap. 15, no. 7 and *ibid.*, note 7; and R. Gavriel Zinner, *Nit’ei Gavri’el: Hilkhhot Pesah*, vol. III, no. 53:1. With regard to the Three Weeks, see *Piskei Teshuvot* 651:13 and *Nit’ei Gavri’el: Bein ha-Metsarim*, chap 15, note 1.
31. See the rather strained interpretation of *Leket Yosher* cited in the name of R. Shlomo Zalman Auerbach by R. Cohen, *Sefer Bein Pesah le-Shevu’ot*, chap. 15, note 5.
32. The admonition of *Yosef Omets* not to sing during the Three Weeks, and certainly not during *sefirah*, indicates that, in his view, the mourning of *sefirah* is more stringent than that of the Three Weeks. Cf. *Sefer Bein Pesah le-Shevu’ot*, chap. 15, note 5.
33. See also *Orhot Rabbeinu*, II, 95, which reports that, although R. Ya’akov Kanievski stated that no prohibition can be found regarding singing during *sefirah*, nevertheless, in his home, he did not permit singing during *sefirah* other than on *Shabbat*.
34. *Piskei Teshuvot*, 651, note 88, seems to assume that, according to *Havot Ya’ir*, the ban against even vocal singing applies not only to the Nine Days, but also to the entire three-week period. R. Gavriel Zinner, *Nit’ei Gavri’el: Hilkhhot Bein ha-Metsarim*, chap. 15, note 24, understands *Havot Ya’ir*’s comments prohibiting vocal singing as limited to the period of the Nine Days.
35. Although both *Leket Yosher* and *Yosef Omets* indicate that vocal singing is prohibited even on *Shabbat*, R. Moshe Feinstein, *Iggerot Moshe, Orah Hayyim*, IV no. 112, sec 1, without citing those authorities, declares that any activity undertaken in honor of *Shabbat* is permissible even on *Shabbat Hazon* and, accordingly, he permits singing even on the part of a person

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- who is not accustomed to singing *zemirot* on an ordinary *Shabbat*. R. Cohen, *Bein Pesah le-Shevu'ot* 15:5, also reports that the prevailing custom is to permit *zemirot* to be sung on *Shabbat*. A similar view is presented by *Nit'ei Gavri'el: Hilkhos Bein ha-Metsarim*, 15:11 and *ibid.*, notes 23 and 26 and *Hilkhos Pesah*, III, 53:12.
36. It should be noted that, as will be discussed later, R. Feinstein, *Iggerot Moshe, Orah Hayyim*, I no. 166, prohibits taped instrumental music during *sefirah* but permits listening to vocal taped music during this period. It may be inferred from his comments that he maintains that there is no *issur* involved in listening to vocal music during periods of mourning.
37. See R. Feinhandler's note published in *Eleh hem Mo'adai*, pp. 311-312.
38. R. Shimon Eider, the author of a contemporary compendium, *A Summary of the Halachos of the Three Weeks*, (Lakewood, 1970), p. 2, states that, "Most *Poskim* hold that even during the Nine Days there is no *issur* to sing *niggunim* without musical instruments."
- Some authorities also note that singing in the form of thanksgiving to the Almighty and for purposes of inspirational prayer is certainly permitted. See, *Yehaveh Da'at*, VI, no. 34 as well as *Nit'ei Gavri'el: Hilkhos Bein ha-Metsarim* 15:11 and *Hilkhos Pesah* 53:10.
39. For a further discussion regarding this issue, see *Nit'ei Gavri'el: Bein ha-Metsarim* 15:5-6 and notes 15-18 and *Nit'ei Gavri'el: Hilkhos Pesah*, III, 53:6 and *ibid.*, no. 10. Cf. *Teshuvot Maharam Schick* who permits instrumental music that "breaks the heart" during the 12-months mourning period for a parent. See also R. Shlomo Dichovsky, *Torah she-be-al Peh*, XLI (2000), p. 55, who similarly permits music of that nature during *sefirah* and the Three Weeks.
40. For the implication of such conversion with regard to listening to the *Megillah*, *Shofar* or *Havdalah* on a radio or telephone—or even over a microphone—see R. Shlomo Zalman Auerbach, *Kovets Ma'amarim be-Inyanei Hashmal be-Shabbat* (Jerusalem, 1978), pp. 36-40; R. Zevi Pesach Frank, *Mikra'ei Kodesh: Purim*, no. 11; as well as the annotated bibliography published by R. Levi Yitshak Halperin, *Ha-Hashmal be-Halakha* (Jerusalem, 1981), II, 268-281.
41. For purposes of the prohibition of playing a musical instrument on *Shabbat*, R. Shlomo Zalman Auerbach *Kovets Ma'amarim be-Inyanei Hashmal*, pp. 41-43, regards a radio as a musical instrument and asserts that the prohibition extends not only to playing an instrument but to listening to instrumental music as well.
42. Cf. the discussion below regarding R. Yosef's opinion, *Yehaveh Da'at*, III, no. 30 and VI, no. 34.
43. See, for example, *Devar Sha'ul, Sotah*, no. 73, sec. 4; R. Samuel ha-Levi Wosznier, *Teshuvot Shevet ha-Levi*, VIII, no. 127, sec. 2; and R. Samuel David Munk, *She'elot u-Teshuvot Pe'at Sadekha* (Jerusalem, 1989), 2nd ed., no. 99. The late Klausenberger Rebbe, R. Yekutiel Yehudah Halberstam, *She'elot u-Teshuvot Divrei Yatsiv*, II, no. 246, expresses doubt with regard to whether songs played on a gramophone or record player are to be considered vocal or instrumental in nature. See also the discussion of R. Binyamin Silber, *Az Nidberu*, VIII, no. 58, sec. 3.

44. Televised concerts would also be permitted according to the latter rationale. According to the first distinction, the question of whether seeing a televised human form is to be equated with seeing the person in the flesh is open to debate.
45. It should be noted that R. Breisch himself does not rely solely upon this argument; rather, he relies primarily upon the positions of Rashi and *Tosafot* who forbid music only at banquets or when it generates “excessive enjoyment” and of *Hagahot Mordekhai* who maintains that music is forbidden only when accompanied solely by wine as distinct from banquets at which food is also served.
46. For additional authorities who reject *Helkat Ya’akov’s* thesis, see *Nit’ei Gavri’el: Hilkhoh Bein ha-Metsarim*, chap 15, note 2 and *Nit’ei Gavri’el, Hilkhoh Pesah*, III, 53, note 2.
47. In a note appended to that responsum, R. Yosef explains his leniency in permitting taped music as based upon the principle of *sefek sefeikah* or double doubt. He asserts that there are two grounds for leniency: (1) the majority of halakhic authorities permit even instrumental music that is unaccompanied by wine; (2) even if one disagrees with that opinion and maintains that all instrumental music is forbidden, it may be contended, as does *Helkat Ya’akov*, that taped music is distinguishable from the music that existed in the time of the Sages and is not included in their prohibition. Thus, R. Yosef did not rely solely upon *Helkat Ya’akov’s* argument. Indeed, as noted previously, *Helkat Ya’akov* himself utilizes this rationale only as an additional reason (or *snif*) for leniency. Accordingly, during *sefirah* and the Three Weeks, when R. Yosef maintains that instrumental music is forbidden according to all authorities, *Helkat Ya’akov’s* thesis that taped music not be considered to be instrumental music, would, on its own, not be sufficient to rely upon.
48. It seems to this writer that R. Yosef would have further reason to forbid taped instrumental music during these periods as explained above, note 47.
49. It would follow that a mourner is similarly forbidden to listen to taped music.
50. Although R. Shlomo Zalman Braun, *She’arim Metsuyanim be-Halakha, Kuntres Aharon* 122:2, permits listening to taped music when the purpose is to arouse feelings of *yirat shamayim*, R. Braun should not be misunderstood as stating that taped music is intrinsically permitted; he merely suggests that a dispensation from the prohibition may be warranted because of the purpose for which such music is played. R. Braun adds that one should desist from listening to music even for such salutary purposes during the Nine Days. See also *Kuntres Aharon* 126:6. Nevertheless, R. Samuel David Munk, *Pe’at Sadekha*, no. 56, expresses skepticism in stating that he has never heard of anyone having been prompted to *teshuvah* by music. Cf., however, R. Sha’ul Yedidiah Eleazar Taub of Modzits, *Imrei Sha’ul*, no. 21, who claims in the name of his father, R. Yisra’el Taub of Modzits, that the power of music is so great that it can elevate a person’s soul and influence him to repent.