

2017-2018 Annual Report on Net Neutrality

1. Two years of European net neutrality rules

On April 30, 2016, the net neutrality regulation came into effect¹. Each year, ACM publishes a report regarding its enforcement of this regulation, and their findings. This is the second annual report on net neutrality², and covers the period from May 1, 2017 through April 30, 2018. In addition, ACM looks ahead at next year's key priorities.

In accordance with the European net neutrality regulation, ACM has two tasks. It is to monitor closely and ensure compliance with Articles 3 and 4 of the net neutrality regulation. In addition, it is to promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology.

2. Looking back on 2017

In the past year, ACM devoted a decent amount of attention to net neutrality. For example, ACM implemented policy rules with regard to the transparency of internet download speeds, expanded its knowledge on 5G, handed down a decision in the 'Data-free Music' case of T-Mobile³, and examined the general terms and conditions of providers of internet access services with regard to the net neutrality regulation. Over the past year, ACM also played an active role within BEREC. For example, it helped create a method for a measurement tool to measure internet download speeds, which will be developed by BEREC over the next twelve months⁴. Furthermore, ACM has shared several of its findings on 5G and net neutrality with other BEREC members. In the sections below, we will explain our activities in each category.

2.1 Zero-rating by T-Mobile

Last year, ACM carried out an investigation into T-Mobile's Data-free Music service. Dutch digital-rights organization Bits of Freedom had filed a request for enforcement with ACM. In October 2016, T-Mobile launched its Data-free Music service. With this service, T-Mobile customers can stream music that does not count against their data plans. This is called zero-rating. ACM subsequently tested the service against the net neutrality regulation in conjunction with the BEREC Guidelines. The outcome of this investigation is that the service does not violate European rules on net neutrality: the service is offered in a non-discriminatory manner, and the service does not reduce end-users'

¹ Regulation (EU) 2015/2120.

² Dutch version: <https://www.acm.nl/nl/publicaties/publicatie/17570/Jaarverslag-netneutraliteit-2016-2017>

³ <https://www.acm.nl/en/publications/t-mobile-can-continue-offer-its-data-free-music-service> and <https://www.acm.nl/en/publications/request-enforcement-bits-freedom-has-been-turned-down>

⁴ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/7296-net-neutrality-measurement-tool-specification

choice.

Appeal against ACM's decision

As ACM did not see reason to prohibit the Data-free Music service, it turned down the request for enforcement filed by Bits of Freedom. Bits of Freedom subsequently filed an objection against this rejection. ACM assessed this objection, and came to the conclusion that the Data-free Music service was allowed under the net neutrality rules. Bits of Freedom subsequently filed an appeal against this decision with the District Court of Rotterdam. The court still has to rule on the appeal filed by Bits of Freedom against ACM's decision.

2.2 Examination of the general terms and conditions

ACM has examined the general terms and conditions of internet service providers to check whether the rules as laid down in the net neutrality regulation are complied with. ACM examined, among other aspects, whether it is explained in the general terms and conditions in what way traffic management measures could influence the quality of internet access service. For example, do internet access providers block tethering? Following this examination, several internet access providers adjusted the information in their general terms and conditions.

2.3 Policy rule on the provision of information concerning internet speeds

On November 27, 2017, ACM published the policy rule on the provision of information concerning internet speeds.⁵ In this policy rule, ACM offers its interpretation of the different internet speeds that internet access providers should give information about under Article 4, paragraph 1 under d of the net neutrality regulation. This policy rule entered into force on January 1, 2018 for new contracts, and on March 1, 2018 for existing contracts of both consumers and business end-users. Following the publication of the policy rule, ACM contacted 12 internet access providers, and checked whether they included the internet speeds from the net neutrality regulation in their contracts. At the time of writing this annual report, 11 providers did so in their contracts in accordance with the net neutrality regulation.

2.4 Expanding knowledge on traffic management

ACM expands its knowledge on traffic management. Traffic management can be used to prioritize certain traffic over other traffic. The net neutrality regulation describes when this is allowed, and when it is not. ACM has studied the technical possibilities and real-life situations in the Netherlands and abroad. Discussions have been held with internet service providers, and information has been demanded in order to check whether they meet the rules laid down in the net neutrality regulation. ACM is currently assessing the findings from the first investigations. ACM will contact any market participants for which it still has questions.

⁵ <https://www.acm.nl/en/publications/acm-policy-rule-provision-information-concerning-internet-speeds>.

2.5 5G and net neutrality

Over the past year, ACM looked into various aspects of 5G, the new generation of mobile technology, which is expected to be operational from 2020. The goal of this study was to determine the consequences of 5G for ACM's rules-setting and regulatory tasks. One of the aspects that is examined is how the new 5G technologies relate to the European regulation on net neutrality. For this study, ACM participated in the steering group of the study "5G and net neutrality"⁶ of Dutch research organization TNO.

5G consists of several different technologies that make it possible to treat different services differently on the network. In the telecom sector, this has raised questions about the relationship between the 5G technologies and the net neutrality regulation. ACM is of the opinion that the European net neutrality regulation offers sufficient room for service innovation within the context of 5G. The regulation does not contain a prohibition on the use of specific technologies, and offers room for treating services differently under certain conditions. The idea behind these conditions is to ensure the quality of the internet access service in question, and to prevent the level playing field on the internet from being impeded.

European collaborations

ACM has shared its findings with regard to 5G and net neutrality in BEREC's net neutrality working group, and has subsequently launched a dialogue. This dialogue's objective is to 1) help BEREC form an opinion on 5G and net neutrality and 2) to see what other regulators within BEREC think of the findings. ACM's contribution fits in with the process regarding the upcoming evaluation of the net neutrality regulation by the European Commission.

⁶ <https://www.tno.nl/nl/over-tno/nieuws/2018/4/tno-onderzoekt-netneutraliteit-5g/>

3. Key priorities for May 1, 2018 – April 30, 2019

For the next twelve months, net neutrality is once again a key priority for ACM. ACM will deal with the following topics.

Measurement tool for internet download speeds

BEREC will develop a method for a measurement tool for measuring internet download speeds. ACM continues to be closely involved in this process. ACM expects the BEREC tool to be ready by the end of 2019, and ACM will make preparations for a smooth implementation of the tool afterwards.

Policy rule on network termination points

The policy rule on network termination points of the Ministry of Economic Affairs and Climate Policy may still be published by the end of 2018. With this policy rule, clarity will be given about the interpretation of what a network termination point is. Once the policy rule has come into effect, end-users will be able to exercise their freedom of choice regarding terminal equipment.

Appeal against decision about Data-free Music service

The District Court of Rotterdam will take up the appeal filed by Bits of Freedom in the Data-free Music service case.

Complex and new services

ACM would like to see end-users continue to be able to choose between the best and latest services. In order to ensure this, ACM would like to continue to stay in touch with telecom providers that want to offer new services, and have questions about the application of the net neutrality regulation.

Do you have any indications?

Over the next twelve months, ACM obviously welcomes any new indications about how the net neutrality rules are implemented. Anyone can submit to ACM indications, including about net neutrality, either by phone, social media or in writing (signalen@acm.nl). ACM will take action where needed.