2019-2020 Annual Report on Net Neutrality

On April 30, 2016, the Open Internet Regulation[1] came into effect, also known as the net neutrality regulation. In Europe, internet providers must treat similar categories of internet traffic equally. That means they are not allowed to block or restrict traffic, for example. Providers are allowed to take measures aimed at managing internet traffic, but such measures cannot make any distinction based on content or applications.

ACM is responsible for monitoring and enforcing compliance with the net neutrality regulation in the Netherlands[2], and, each year, ACM publishes a report[3] regarding its enforcement of this regulation, and its findings. This is the fourth annual report on net neutrality, and covers the period from May 1, 2019 through April 30, 2020. Finally, ACM looks ahead at next year's key priorities.

1 Looking back

Over the past twelve months, ACM focused on net neutrality in various areas. In the sections below, ACM's activities with regard to net neutrality will be explained.

1.1 BEREC Guidelines

In 2020, the BEREC Guidelines on Net Neutrality[4] will be revised and restyled as the Guidelines on the implementation of the Open Internet Regulation.[5] ACM actively helped draft these revised guidelines on net neutrality. In this process, ACM built on the experience of its investigation into the zero-rating 'Data-free Music' service of Dutch telecom provider T-Mobile[6] and the TNO analysis of the connection between 5G and net neutrality[7]. In addition, ACM has shared its experience (gained in an investigation into compliance with transparency requirements) with the qualification of the new type of Internet access, fixed wireless access.

1.2 Study into and information about Traffic Management Measures in the Netherlands

In January 2020, ACM published a study[8] into traffic management measures in the Netherlands, which can be described as a set of techniques that are used for managing internet traffic on telecommunications networks. The study revealed that, to the best of our knowledge, Dutch internet

[1] Regulation (EU) 2015/2120 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R2120
[2] https://www.acm.nl/nl/onderwerpen/telecommunicatie/de-telecommarkt/netneutraliteit-internetaanbieders (in Dutch)
[3] Previous annual reports can be found on https://www.acm.nl/en/publications/2018-2019-annual-report-net-neutrality and https://www.acm.nl/en/publications/annual-report-net-neutrality-2017-2018.
[4] http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/6160-berec-guidelines-on-the-implementation-b_0.pdf
[5] https://berec.europa.eu/eng/netneutrality/
[6] https://www.acm.nl/en/publications/t-mobile-can-continue-offer-its-data-free-music-service
[7] http://publications.tno.nl/publication/34626427/NhaOCU/TNO-2018-R10394.pdf
[8] https://www.acm.nl/en/publications/acm-study-telecom-providers-treat-their-internet-traffic-according-rules

service providers (ISPs) do not take any measures that treat internet traffic differently based on content or applications. Furthermore, all providers have put into place processes to ensure that their traffic management measures comply with the rules regarding net neutrality. Prompted by discussions with ACM, several providers clarified their information on traffic management in their general terms and conditions. ACM has concluded that traffic management of the telecom providers meets the requirements of net neutrality.

In that context, ACM has published the results of the study in order to offer telecom providers information about traffic management and the thereto-related rules. Those rules are further explained in a guidance document[9], which includes several examples. This guidance document also contains questions that ACM uses in its assessment of traffic management measures.

In addition, ACM has held discussions with several market participants about exemptions from the prohibition of blocking traffic laid down in Article 3, paragraph 3, sub 3, under a of the Open Internet Regulation), following a court ruling.

1.3   Investigation into transparency of broadband offerings

Following an indication it had received, ACM conducted an investigation into whether the plans that are offered by providers that include broadband access at home over an ISP's mobile networks (so-called fixed-wireless access, or FWA) meet the transparency requirements laid down in the Open Internet Regulation. FWA services must meet transparency requirements for fixed broadband access services if the service is offered, inter alia, at a fixed location with designated equipment. ACM came to the conclusion that the FWA service must comply with the transparency requirements for fixed broadband access services. At the request of ACM, the ISP in question brought the conditions in its contracts in line with the transparency requirements for fixed broadband access services.

1.4   Opinions in connection with pre-judicial questions about net neutrality

Courts in EU member states have the opportunity to seek preliminary rulings from the Court of Justice of the European Union on the interpretation of European legislation. Over the past twelve months, three cases have been brought to the Court of Justice of the EU, in which requests were filed, seeking an interpretation of Article 3 of the Open Internet Regulation. These cases primarily involved the qualification of the zero-rating services offered by an ISP. Together with the Dutch Ministry of Economic Affairs and Climate Policy, ACM helped the Dutch Ministry of Foreign Affairs draw up written remarks on behalf of the Netherlands.

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[9] https://www.acm.nl/nl/publicaties/traffic-management-voorlichtend-document

1.5   Keeping a close watch on increased strain on networks because of the Coronavirus outbreak

The Coronavirus (COVID-19) outbreak has led to a considerable increase in broadband data usage. The measures taken by the government aimed at preventing the spread of the virus, such as working from home and self-quarantine, have put increased demand on telecommunications networks, thereby increasing the risk of network congestion. In close cooperation with the European Commission, the national regulatory authorities have agreed, at the BEREC level, to keep each other informed about the situations in the different countries, with an eye to potential necessary traffic management measures.[10] Each week, BEREC summarized and published these reports.[11] For those reports, ACM each week submitted input with the help of the Dutch telecom operators. In the Netherlands, ISPs did not have to take any traffic management measures in the sense of the Open Internet Regulation, despite a sharp increase in Internet traffic. The Dutch ISPs continually work on the infrastructure for maintenance and expansion.

2   Key priorities for June 2020 – May 2021

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

2.1   Follow-up study into the market for IP interconnection

In 2015, ACM carried out a study into the market for IP interconnection in the Netherlands.[12] This study looked into, among other topics, the market conditions for peering and transit from a competition-law perspective, and into any possible overlaps with net neutrality. In 2020, ACM will once again take stock of the current situation, and identify any potential bottlenecks with regard to interconnection. In that stock-taking exercise, attention will be given to, among other aspects, the current practices concerning peering and transit, as well as to the role of Internet exchanges. In addition, the altered legal landscape will be analyzed. For example, the European Electronic Communications Code (EECC)[13] is currently being implemented, and the Open Internet Regulation has come into effect since its initial publication in 2015.

2.2   Roll-out of the net neutrality measurement tool

As the finalization of the development phase of the open source software for BEREC's measurement tool is imminent, ACM over the next 12 months, will focus on an optimal implementation and introduction of the measurement tool in the Netherlands. In addition, ACM will sit down with providers to prepare for this new measurement system, so that the roll-out will take place as smoothly as possible.

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[10] https://www.acm.nl/nl/publicaties/statement-dg-connect-en-berec
[11] https://berec.europa.eu/
[12] https://www.acm.nl/en/publications/publication/14821/Study-into-IP-interconnection-in-the-Netherlands
[13] The European Electronic Communications Code (EECC) is the new European framework for regulation of the telecommunications market. See Directive (EU) 2018/1972: https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN

2.3   Exploring the transition to IPv6 in the Netherlands

BEREC has shown interest in making the transition from IPv4 to IPv6, a new standard for the use of IP addresses. The number of available IPv4 addresses has been depleted, but the introduction of IPv6 could lead to new problems. It appears there are differences between countries in how diligently the market and government organizations are currently dealing with the transition to IPv6. BEREC wishes to assess whether or not the roll-out of IPv6 (or the delay thereof) could lead to net neutrality issues.

Do you have any indications?

Over the next twelve months, too, ACM will continue to look into any new indications it receives about how net neutrality rules are implemented. Everybody has the opportunity to submit indications about net neutrality to ACM, either by phone, social media or in writing (signalen.TVP@acm.nl). ACM will take action where needed.