



# 2020-2021 Annual Report on Net Neutrality

On April 30, 2016, the Open Internet Regulation<sup>1</sup> 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<sup>2</sup>, and, each year, ACM publishes a report<sup>3</sup> regarding its enforcement of this regulation, and its findings. This is the fifth annual report on net neutrality, and covers the period from May 1, 2020 through April 30, 2021. 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. The coronavirus (COVID-19) outbreak and as a result more people working from home caused an increase in broadband data traffic. However, Internet Service Providers (ISP's) in the Netherlands have not been required to apply traffic management measures in this period due to capacity shortages. The Dutch networks are robust and were able to handle the increase in broadband usage as a result of the coronavirus outbreak. For that reason the ACM, other than in cooperation with BEREC (see paragraph 1.3), has not acted on the issue.

In the sections below, ACM's activities with regard to net neutrality will be explained.

### 1.1 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.<sup>4</sup> 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 the past year ACM has once again taken stock of the IP interconnection market. In that market scan ACM among other things looked at the current practices concerning peering and transit, and the balance between content providers and ISP's. Furthermore, the legal landscape in the context of IP interconnection is explored in the report, including a look at the European Electronic Communications Code (EECC)<sup>5</sup>

<sup>1</sup> Regulation (EU) 2015/2120 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R2120>

<sup>2</sup> <https://www.acm.nl/nl/onderwerpen/telecommunicatie/de-telecommarkt/netneutraliteit-internetaanbieders> (in Dutch)

<sup>3</sup> Article 5(1) of the Open Internet Regulation obligates ACM to publish an annual report on her monitoring and findings regarding net neutrality and share this report with the European Commission and BEREC. Previous annual reports can be found on <https://www.acm.nl/en/publications/2019-2020-annual-report-net-neutrality> and <https://www.acm.nl/en/publications/2018-2019-annual-report-net-neutrality>.

<sup>4</sup> <https://www.acm.nl/en/publications/publication/14821/Study-into-IP-interconnection-in-the-Netherlands>

<sup>5</sup> The European Electronic Communications Code (EECC) is the new European framework for regulation of the

that is currently being implemented, and some provisions in competition law. IP interconnection is in itself not part of the internet access service and therefore falls outside of the scope of the Open Internet Regulation. However, the interconnection policies of ISP's can be taken into account when assessing possible restrictions to end-users rights in the context of net neutrality, for example when interconnection is used to circumvent the net neutrality rules. The findings of this new market study will be published on the website of ACM in the summer of 2021.

## 1.2 Policy rule regarding free choice of modems

The Open Internet Regulation stipulates that end-users have a free choice of terminal equipment and therefore also the right to choose their own modem and connect it to the network of the ISP. In July 2020 ACM published and started the consultation on the draft policy rule on free choice of modems and other terminal equipment.<sup>6</sup> With this policy rule ACM wants to provide clarity about which equipment is part of the access network owned by the telecom operator, and which part is controlled by the consumer.. ACM's policy rule is based on the BEREC Guidelines on this topic.<sup>7</sup> The final version of the policy rule is expected to be published in the summer of 2021.

## 1.3 BEREC

ACM takes part in the BEREC Open Internet Working Group. In the past year the working group has focused on the transition from IPv4 to IPv6 in the different European countries and the possible problems due to the depletion of IPv4 addresses. ACM has provided input on the situation in the Netherlands. In the past year the working group has organized a technical workshop about the transition to IPv6. Furthermore, through the working group the status of telecom networks in the different member states was monitored and whether there was a need to take traffic management measures due to the corona crisis .<sup>8</sup> The Dutch networks are robust and were able to handle to the increase in broadband usage as a result of the corona situation. In the first half of 2021, the peak volume on the biggest internet exchange in the Netherlands (AMS-ix) is over 10 Tb/s.<sup>9</sup>

## 1.4 Specialized services

The roll out of 5G makes is not only easier for ISP's to offer specialized services but also services with different levels of Quality of Service. Examples of these type of services are, business specific applications but also services for first responders. The Open Internet Regulation allows ISP's to offer these type of services under certain conditions. It is for example important that offering these services are not to the detriment of the quality of the internet access service for other end-users. In the past year ACM talked to different ISP's in order to assess whether these type of services are offered, and if so, if these services are in compliance with the Open Internet Regulation. The

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telecommunications market. See Directive (EU) 2018/1972: <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

<sup>6</sup> <https://www.acm.nl/en/publications/acm-consumers-are-allowed-choose-their-own-modems>

<sup>7</sup> [https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/download/0/9033-bereg-guidelines-on-common-approaches-to\\_0.pdf](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/download/0/9033-bereg-guidelines-on-common-approaches-to_0.pdf)

<sup>8</sup> [https://bereg.europa.eu/eng/news\\_and\\_publications/whats\\_new/8224-bereg-publishes-the-first-summary-report-in-2021-on-the-status-of-internet-network-capacity-regulatory-and-other-measures-in-light-of-the-covid-19-crisis](https://bereg.europa.eu/eng/news_and_publications/whats_new/8224-bereg-publishes-the-first-summary-report-in-2021-on-the-status-of-internet-network-capacity-regulatory-and-other-measures-in-light-of-the-covid-19-crisis).

<sup>9</sup> <https://www.ams-ix.net/ams/documentation/total-stats>

assessment showed that the total number of these of these type of services in the Netherlands is still limited and that ISP's are aware of the applicable rules. ACM will stay in dialogue with ISP's to make sure that the implementation of these services is not in violation of the Open Internet Regulation.

## **2 Key priorities for June 2021 – May 2022**

For the next twelve months, ACM will work to make sure that ISP's comply with the net neutrality rules and that end-users have access to an open internet. ACM will focus on the following topics:

### **2.1 Internet ecosystem**

In the coming year ACM will continue to participate in the BEREC working group on Open Internet and mainly contribute to the study BEREC is performing on the internet ecosystem. This study is being done in collaboration with the BEREC working group on *Market and Economic Analysis*. The internet plays an important role for the proper functioning of platforms and therefore the digital economy. In this study BEREC will investigate how the different elements of the internet ecosystem influence each other and identify potential bottlenecks. In this study BEREC will also determine if and how these bottlenecks impact the open internet.

### **2.2 Measurement tool internet speed**

ACM has decided to not implement the measurement tool that was developed for BEREC. At this moment ACM is considering alternative solutions in consultation with relevant stakeholders.

### **2.3 Dialogue with market players**

An important part of the work ACM does on net neutrality is having a continuous dialogue with market players about the applicability of the Open Internet Regulation on their services, and ACM will continue to do so in the coming year as well. Innovative services or specific situations can raise questions from ISP's about how the Regulation and Guidelines<sup>10</sup> apply. ACM is therefore always open to questions about net neutrality regarding new developments in the telecom sector.

#### **Do you have any indications?**

Over the next twelve months ACM will continue to look into any new indications on compliance with net neutrality. Everybody has the opportunity to submit indications regarding net neutrality to ACM, either by phone, social media or in writing. ACM will take action where needed. [Submitting your tip-off or indication to ACM | ACM.nl](#)

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<sup>10</sup> [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/regulatory\\_best\\_practices/guidelines/9277-berec-guidelines-on-the-implementation-of-the-open-internet-regulation](https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/9277-berec-guidelines-on-the-implementation-of-the-open-internet-regulation)