

# PROTECTING AND PROMOTING THE RIGHT TO FREEDOM OF EXPRESSION AND THE RIGHT TO PRIVATE LIFE WITH REGARD TO NETWORK NEUTRALITY



Recommendation CM/Rec(2016)1

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# PROTECTING AND PROMOTING THE RIGHT TO FREEDOM OF EXPRESSION AND THE RIGHT TO PRIVATE LIFE WITH REGARD TO NETWORK NEUTRALITY

**Recommendation CM/Rec(2016)1**  
adopted by the Committee of Ministers  
of the Council of Europe  
on 13 January 2016

French edition:

*La protection et la promotion du droit à  
la liberté d'expression et du droit à la vie  
privée en lien avec la neutralité du réseau  
(Recommandation CM/Rec(2016)1)*

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Cover design and layout:  
Documents and Publications  
Production Department  
(SPDP), Council of Europe

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Printed at the Council of Europe

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# Recommendation CM/Rec(2016)1

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## of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality

*(Adopted by the Committee of Ministers on 13 January 2016,  
at the 1244th meeting of the Ministers' Deputies)*

1. In the information society, the exercise and enjoyment of the right to freedom of expression by individuals, including the right to receive and impart information and ideas, as well as their participation in democratic life, are increasingly reliant upon the accessibility and quality of an Internet connection.
2. Providers of Internet access services have the technical ability to manage information and data flows (Internet traffic) transiting through the networks that they operate. They may engage in Internet traffic management for specific legitimate purposes, for example to preserve the integrity and security of the network. They may also take action to prevent access to, or the dissemination of, unlawful or harmful content, for example through self-regulatory systems in co-operation with public authorities. However, other interferences with Internet traffic may affect the quality of the Internet service delivered to users and may result in blocking, discrimination or prioritisation of specific types of content, applications or services. Moreover, some of the techniques used in this context permit inspection or monitoring of communications, which can undermine users' trust in the Internet.

3. These issues raise concerns in respect of the protection and promotion of the right to private life and the right to freedom of expression, which are guaranteed respectively by Articles 8 and 10 of the European Convention on Human Rights (ETS No. 5, hereinafter the Convention), as well as in the light of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). There are also implications for access to diverse and pluralistic information and public service media content on the Internet, which are fundamental for democracy and cultural diversity. The right to freedom of expression, including the right to receive and impart information, is not an absolute right. However, any restrictions to the exercise of this right must meet the requirements of Article 10, paragraph 2, of the Convention.

4. The principle of network neutrality underpins non-discriminatory treatment of Internet traffic and the users' right to receive and impart information and to use services of their choice. It reinforces the full exercise and enjoyment of the right to freedom of expression because Article 10 of the Convention applies not only to the content of information but also to the means of its dissemination. Also, the principle of network neutrality supports technological innovation and economic growth.

5. The Committee of Ministers recalls Article 1 of the Statute of the Council of Europe (ETS No. 1) and relevant Council of Europe instruments, notably the Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration (31 January 2007), Recommendation CM/Rec(2007)3 on the remit of public service media in the information society, Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet, Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters, the Declaration of the Committee of Ministers on network neutrality (29 September 2010), the Declaration by the Committee of Ministers on Internet governance principles (21 September 2011) and Recommendation CM/Rec(2014)6 to member States on a Guide to human rights for Internet users. With a view to protecting and promoting the right to private life and the right to freedom of expression in full compliance with Articles 8 and 10 of the Convention as well as to promoting the full delivery of the public service value of the Internet, the Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, recommends that member States:

- take all the necessary measures, in co-operation with all relevant stakeholders, to safeguard the principle of network neutrality in their

policy frameworks having due regard to the guidelines set out in the appendix to this recommendation;

- promote these guidelines in other international and regional fora that deal with the issue of network neutrality.

## **Appendix to Recommendation CM/Rec(2016)1**

### **Guidelines on network neutrality**

#### **1. General principles**

1.1. Internet users have the right to freedom of expression, including the right to receive and impart information, by using services, applications and devices of their choice, in full compliance with Article 10 of the Convention. These rights must be enjoyed without discrimination on any ground such as gender, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1.2. Internet users' right to receive and impart information should not be restricted by means of blocking, slowing down, degrading or discriminating Internet traffic associated with particular content, services, applications or devices, or traffic associated with services provided on the basis of exclusive arrangements or tariffs.

1.3. Internet users should be entitled to an Internet connection with the characteristics defined in the contractual agreements that they have concluded with Internet access service providers on the basis of specific and adequate information that is provided to users with regard to all aspects which might affect their access to the Internet and their right to receive and impart information.

#### **2. Equal treatment of Internet traffic**

2.1. Internet traffic should be treated equally, without discrimination, restriction or interference irrespective of the sender, receiver, content, application, service or device. This is understood as the network neutrality principle for the purpose of this recommendation. The network neutrality principle applies to all Internet access services irrespective of the infrastructure or the network used for the Internet connection and regardless of the underlying technology used to transmit signals.



2.2. This does not preclude Internet traffic management measures which are necessary and proportionate to:

- give effect to a court order or an order of a regulatory authority;
- preserve the integrity and security of the network, services provided via the network and end-users' terminal equipment;
- prevent network congestion and optimise traffic management when congestion occurs.

2.3. Internet traffic management measures should be non-discriminatory, transparent and maintained no longer than strictly necessary. Traffic management policies should be subject to periodic review by competent authorities within each member State.

### **3. Pluralism and diversity of information**

3.1. Internet service providers should not discriminate against traffic from other providers of content, applications and services which compete with their own products. This requires that traffic management decisions be strictly dissociated from content-related decision-making processes of the operator in the spirit of the 2007 Committee of Ministers' Declaration on protecting the role of the media in democracy in the context of media concentration.

3.2. As an exemption to the network neutrality principle, preferential treatment of traffic on the basis of arrangements between Internet service providers and providers of content, applications and services should be allowed only if sufficient safeguards for users' ability to access, use and impart information are in place. In particular, preferential treatment of traffic should not diminish or affect the affordability, performance or quality of users' access to the Internet. Internet users should have a real opportunity to choose an Internet connection without preferential treatment of traffic. They must also be informed about the impact that such treatment might have on their ability to access, use and impart information, diverse and pluralistic content that is publicly available, applications and services of their choice.

3.3. If the physical Internet connection is shared between Internet traffic and other services, States may consider imposing reasonable, transparent and proportionate obligations on Internet service providers to carry content which meets general interest objectives.

## **4. Privacy**

4.1. Internet traffic management measures should involve processing of personal data only to the extent that is necessary and proportionate to achieve the purposes set out in the second section of these guidelines. Such measures should be in accordance with Article 8, paragraph 2, of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and applicable legislation on the right to private life and personal data protection.

4.2. The use of Internet traffic management techniques that are capable of assessing the content of communications is an interference with the right to respect for private and family life. Therefore, such use must be fully in line with Article 8 of the Convention, be tested against applicable legislation on the right to private life and personal data protection and reviewed by a competent authority within each member State in order to assess compliance with legislation.

## **5. Transparency**

5.1. Internet service providers should provide users with clear, complete and publicly available information with regard to any traffic management practices which might affect users' access to and distribution of content, applications or services. Internet users should be able to obtain information from Internet service providers about Internet traffic management and Internet speeds.

5.2. Competent authorities within each member State should monitor and report on Internet traffic management practices. Reports should be prepared in an open and transparent manner, and made available to the public free of charge.

## **6. Accountability**

6.1. Internet service providers should put in place appropriate, clear, open and efficient procedures to respond within reasonable time limits to complaints from Internet users alleging breaches of the principles included in the foregoing provisions. Internet users should have the possibility to refer the matter directly to competent authorities within each member State and be entitled to timely redress.

6.2. States should ensure in their policy frameworks the accountability of Internet service providers with regard to respect for the principle of network neutrality. Accountability also requires that appropriate mechanisms are in place to respond to network neutrality complaints.







Internet traffic should be treated equally, without discrimination, restriction or interference irrespective of the sender, receiver, content, application, service or device. Whilst acknowledging that Internet traffic management can sometimes pursue legitimate purposes, the recommendation on Network Neutrality stresses that traffic management can also result in blocking, discrimination or prioritisation of specific types of content, applications or services. It sets out guidelines regarding equal treatment of internet traffic. Safeguards for freedom of expression such as necessity, proportionality and time limitations are formulated.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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